



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

NOTICE OF PUBLIC MEETING

NAME OF ORGANIZATION: NEVADA COMMISSION ON ETHICS
DATE & TIME OF MEETING: February 16, 2022, at 9:30 a.m.
PLACE OF MEETING: This meeting will be held exclusively via Zoom:

Zoom Meeting Information
<https://us06web.zoom.us/j/81741817354?pwd=UFBmQnh1Ris2dEhZNnluWjVFcEVOZz09>
Zoom Meeting Telephone Number: 669-900-9128*
 Meeting ID: 817 4181 7354
 Passcode: 614991

Commissioners may appear telephonically.

*Please Note: If you choose to participate telephonically,
 your telephone number may be displayed in the Zoom public platform.

**MEMBERS OF THE PUBLIC ARE ALSO INVITED TO SUBMIT WRITTEN PUBLIC COMMENT
 WHICH WILL BE SUBMITTED INTO THE RECORD OF THE PUBLIC MEETING.**

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. Members of the public may also submit written public comment to the Commission at ncoe@ethics.nv.gov.

	1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.
	2. 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. Approval of Minutes of the January 19, 2022, Commission Meeting.
For Possible Action	4. Report by Executive Director, on agency status and operations and possible direction thereon. Items to be discussed include, without limitation: <ul style="list-style-type: none"> • Outreach and Education • FY22 Budget Status • Case Status Update • Commission Meeting Status

For Possible Action	5. Consideration and approval of the Telecommuting Policy as presented by the Executive Director.
For Possible Action	6. Discussion and approval of a Proposed Stipulation for Consent Order concerning Ethics Complaint No. 20-007C regarding Steven Morris, City Attorney, City of Boulder City, State of Nevada, and authorization for the Chair of the Commission, in coordination with Commission Counsel, to prepare and issue the related confidential letter of instruction.
For Possible Action	7. Discussion of Legislative priorities and appointment of a Subcommittee of the Nevada Commission on Ethics to Develop the Commission's Bill Draft Request for the 2023 Legislative Session.
For Possible Action	8. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.
	9. 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	10. Adjournment.

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 Ross E. Armstrong, 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.
- ❖ Any meeting or hearing held by the Commission pursuant to NRS 281A.760 to receive information or evidence regarding the conduct of a public officer or employee and deliberations of the Commission concerning an ethics complaint are exempt from the provisions of NRS Chapter 241, Nevada's Open Meeting Law. As a result, these agenda items, or any portion of them, may be heard in closed session.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020 not later than 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>

Agenda Item 3



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

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

The Commission on Ethics held a public meeting on
Wednesday, January 19, 2022, at 9:30 a.m.
Virtually via Zoom as follows:

Zoom Meeting Information:

<https://us06web.zoom.us/j/85009716653?pwd=RjlaNTF6WGk5bzIMRDNWSWJCVjNGQT09>

Zoom Meeting Telephone Number: 669-900-9128

Meeting ID: 850 0971 6653

Passcode: 420650

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. A recording of the meeting is available for public inspection at the Commission's office.

1. Call to Order and Roll Call.

Chair Kim Wallin, CPA, CMA, CFM appeared via videoconference and called the meeting to order at 9:33 a.m. Also appearing via videoconference were Vice-Chair Brian Duffrin and Commissioners Barbara Gruenewald, Esq., Teresa Lowry, Esq., James Oscarson, and Thoran Towler, Esq. Commissioner Amanda Yen, Esq. appeared telephonically. Commissioner Damian R. Sheets, Esq. was absent from the meeting. Present for Commission staff via videoconference were Executive Director Ross E. Armstrong, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Elizabeth J. Bassett, Esq., Investigator Erron Terry, Senior Legal Researcher Darci Hayden and Executive Assistant Kari Pedroza.

The pledge of allegiance was conducted.

2. Public Comment.

There was no public comment.

3. Approval of Minutes of the November 17, 2021 Commission Meeting.

Chair Wallin stated that all Commissioners were present for the November Commission Meeting.

Commissioner Towler moved to approve the November 17, 2021 Commission Meeting Minutes as presented. Commissioner Yen seconded the motion. The Motion was put to a vote and carried unanimously.

4. Report by Executive Director on agency status and operations and possible direction thereon. Items to be discussed include, without limitation:

- FY22 Budget Status
- Budget and Legislative Session Planning
- Campaign Legal Center Report
- Commission Meeting Status
- Social Media and other Outreach

Executive Director Armstrong began by thanking Commissioners and staff for welcoming him into his new role.

FY22 Budget Status: Executive Director Armstrong reported that the Commission was on track to expend the current fiscal year funds by June 30, which is the end of the fiscal year. He noted options for utilizing funds in the travel, training and information technology categories.

Budget and Legislative Session Planning: Executive Director Armstrong shared his Review of Upcoming Budget and Legislative Timelines PowerPoint with the Commission.

Campaign Legal Center Report: Executive Director Armstrong referred to the Campaign Legal Center Report provided in the meeting materials and highlighted the reports references to the Commission.

Social Media and other Outreach: Executive Director Armstrong provided an update on the Commission's social media and outreach plan, specifically increasing the Commission's twitter presence and planning training opportunities for public officers and employees throughout the state.

Executive Director Armstrong reported the recent increase in Acknowledgment of Ethical Standards submissions resulting from targeted tweets and agency emails.

Commission Meeting Status: Executive Director Armstrong stated that the February 16 Commission meeting agenda will be substantial, and the backlog will be much more manageable.

The Commissioners agreed on the inclusion of a Bill Draft Request (BDR) Subcommittee item on the February 16 Commission meeting agenda. Commissioner Oscarson expressed his interest in serving on the BDR Subcommittee alongside Chair Wallin and Vice-Chair Duffrin. Chair Wallin and Vice-Chair Duffrin requested their fellow Commissioners review AB 65 and provide feedback regarding their prioritized changes to the previous BDR at the February meeting.

Commissioner Yen moved to accept the Executive Director's agency status report as presented. Vice-Chair Duffrin seconded the motion. The motion was put to a vote and carried unanimously.

5. Consideration and approval of the 2022 Nevada Commission on Ethics Public Records Policy as presented by the Executive Director.

Executive Director Armstrong referred to the proposed updated Public Records policy provided in the meeting materials and highlighted the changes.

Vice-Chair Duffrin asked if the policy would be posted on the Commission's website and if public records requests could be submitted electronically to the Commission. Executive Director Armstrong confirmed the policy would be posted on the Commission's website as well as at the Commission's office. Commission Counsel Chase confirmed that the Commission receives public records requests electronically.

Commissioner Oscarson moved to accept the Public Records Policy as presented. Commissioner Towler seconded the motion. The motion was put to a vote and carried unanimously.

6. Consideration and approval of the Telecommuting Policy as presented by the Executive Director.

Executive Director Armstrong presented the Telecommuting Policy as provided in the meeting materials.

Commissioner Oscarson requested information on the Confidentiality Assessment process and Executive Director Armstrong provided clarification.

Commissioner Towler shared his concern with the lack of workers compensation language in the policy as presented and agreed to discuss proposed inclusions with Executive Director Armstrong prior to the February meeting.

Commissioner Lowry made a motion for continuance to allow for revisions to the policy and upon review, consideration at the February Commission meeting. Commissioner Gruenewald seconded the motion. The motion was put to a vote and carried unanimously.

7. Consideration and approval of the Penalty Payment Schedule Authority as presented by the Executive Director.

Executive Director Armstrong referenced language in the meeting packet about authority for the Executive Director to enter into a written agreement to adjust the payment schedule on penalties in the event there is good cause to do so. Such agreements would be presented to the Commission as information items.

Vice-Chair Duffrin moved to approve the penalty payment schedule authority as presented. Commissioner Yen seconded the motion. The motion was put to a vote and carried unanimously.

8. Status Update on City of Reno policy instituted pursuant to Approved Deferral Agreement in Ethics Complaint No. 20-010C regarding Bonnie Weber, Councilmember, City of Reno, State of Nevada.

Associate Counsel Bassett reported that City of Reno Policy 401 has been updated in compliance with the Approved Deferral Agreement in Ethics Complaint No. 20-010C and as a result, an Order of Compliance would be issued in this case.

This was not an action item.

9. Discussion and approval of a Proposed Stipulation concerning Ethics Complaint No. 19-102C regarding Tina Quigley, former Member of the Nevada High-Speed Rail Authority, State of Nevada.

Chair Wallin stated for the record that Commissioners Yen, Lowry and Towler served as members of the Review Panel and would be precluded from participating in this item.

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Chair Wallin asked the parties in the Complaint to identify themselves for the record. Associate Counsel Elizabeth J. Bassett, Esq. appeared on behalf of Executive Director Armstrong before the Commission in this matter and Mark Ferrario, Esq. appeared on behalf of Tina Quigley, who was not in attendance but was provided proper notice of the Agenda Item and understood that the Commission would proceed in her absence.

Associate Counsel Bassett provided an overview of Ethics Complaint Case No. 19-102C (Quigley) and the Proposed Stipulation. The Complaint alleged that Quigley used her official position on the Nevada High-Speed Rail Authority and the relationships that she developed in that public position to obtain private employment with Virgin Trains, the successor to the franchisee selected by the Authority. A Review Panel consisting of 3 members of the Commission on Ethics determined that just and sufficient cause exists for the Commission to render an Opinion regarding the allegations pertaining to NRS 281A.400 subsection (10) and 281A.410 subsection (1).

The Proposed Stipulated Agreement outlined that Ms. Quigley agreed to complete Ethics Training within six (6) months of the execution of the Agreement.

Ms. Quigley's counsel, Mark Ferrario, Esq. thanked Commissioner Yen and Commission staff for their collaborative efforts and stated that the Stipulation was the right resolution for the matter.

Commissioner Gruenewald made a motion to accept the terms of the Stipulation as presented by the parties and direct Commission Counsel to finalize the Stipulation in appropriate form. Chair Wallin seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lowry:	Abstain. (Review Panel Member)
Commissioner Oscarson:	Aye.
Commissioner Towler:	Abstain. (Review Panel Member)
Commissioner Yen:	Abstain. (Review Panel Member)

10. Commissioner comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.

Chair Wallin thanked Executive Director Armstrong for a good job on his first Commission meeting.

11. Public Comment.

There was no public comment.

12. Adjournment.

Commissioner Yen made a motion to adjourn the public meeting. Commissioner Oscarson seconded the motion. The Motion was put to a vote and carried unanimously.

The meeting adjourned at 10:50 a.m.

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Minutes prepared by:

[/s/ Kari Pedroza](#)

Kari Pedroza
Executive Assistant

[/s/ Ross E. Armstrong, Esq.](#)

Ross Armstrong, Esq.
Executive Director

Minutes approved February 16, 2022

Kim Wallin, CPA, CMA, CFM
Chair

Brian Duffrin
Vice-Chair

Agenda Item 4



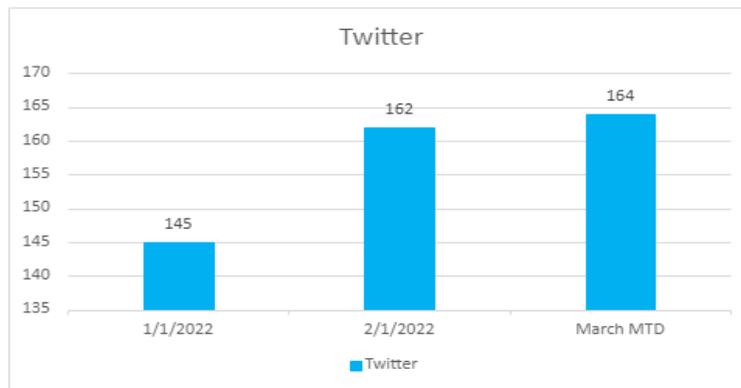
**STATE OF NEVADA
COMMISSION ON ETHICS**

Executive Director Report - February 2022

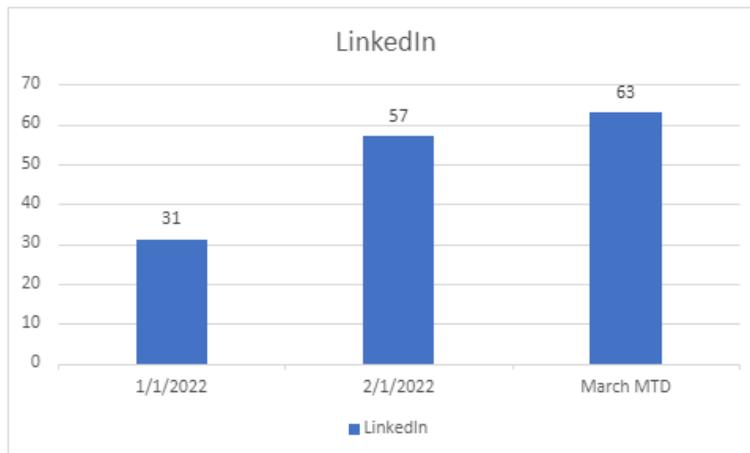
Education and Outreach

Social Media - The Commission’s social media platforms have seen substantial growth in the number of followers since January 1 as content is regularly presented on Twitter and LinkedIn.

Twitter



LinkedIn



Training and Technical Assistance

- Boulder City and Nye County training scheduled for early March
- Clark County reported training of 77 staff in December and January

Events and Misc. Engagements

- Campaign Legal Center Webinar *Fostering Public Trust* (ED Armstrong served as a panelist)

FY22 Budget Update

The Commission is on track to appropriately spend funds allocated in the 2022 Fiscal Year. Training and meetings events in the Spring should help the Commission spend down travel money assuming improved COVID-19 conditions.

Work Programs are expected to be needed to shift funds to

Category 4 (Operations) - due to increase in office rent

Category 26 (Information Systems) - one-time expenditure to enhance online training capabilities

Categories with current projected surpluses:

Category 1 (Personnel)

Category 3 (In-state Travel)

Category 30 (Training)

Case Status Update

Commission staff continue to work diligently on reducing any case backlog. As of the date of this report there are:

- 2 cases pending jurisdiction determinations
- 3 cases set for the February Review Panel for determinations
- 3-4 cases anticipated for the March Review Panel

After the March Review Panel meeting, the case backlog is expected to be cleared.

Commission Meeting Status

The Commission is set to meet on March 16 and April 20 with Review Panels also meeting on those days. We are hopeful that the COVID-19 conditions will improve, and we will be able to return to in-person meetings soon.

Submitted: Ross E. Armstrong, Executive Director

Date: 2/9/2022

Agenda Item 5



STATE OF NEVADA
COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Phone: (775) 687-5469
Facsimile: (775) 687-1279
Email: ncoe@ethics.nv.gov

Subject:
Telecommuting

Commission Approval Date:
XX/XX/2022

Effective Date:
XX/XX/2022

Telecommuting Policy

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1. POLICY

- A. This policy establishes guidelines for telecommuting for Commission Staff that report to the Executive Director pursuant to an arrangement where an employee is authorized to work from home or an alternative location, away from their primary workplace. Not all positions are amenable to telecommuting and approvals will be made on an individual basis, will be at the discretion of the Executive Director or authorized designee and may be terminated at any time based on the needs of the Commission by its Supervisor or direction issued by the Commission.¹
- B. The Supervisor and telecommuting employees must be familiar with the contents of this policy.
- C. Telecommuting is not an employee entitlement. A Telecommuting Agreement must be in place before an employee may telecommute, or Telecommuting must be specifically directed by a Supervisor or the Governor in response to emergency, hazardous weather, or other supporting situations.
- D. Conditions of employment shall remain the same as for non-telecommuting employees; wages, benefits and leave accrual are unchanged unless there is a change in employment status or scheduled hours that impacts benefit eligibility. All Commission policies, rules, and procedures apply at the telecommuting workplace, including those governing communicating internally and with the public, employee rights and responsibilities, facilities and equipment management, financial management, information resource management, purchasing of property and services, and safety.
- E. Failure to follow policy, rules and procedures may result in termination of the telecommuting arrangement and/or disciplinary action.
- F. The Telecommuting Agreement shall specify the work hours agreed upon by the employee and Supervisor. The hours shall be the same as the employee works in their regular duty location unless an Alternative Work Agreement accompanies the Telecommuting Agreement.

¹ Pursuant to NRS 281A.240(2), the Executive Director shall carry out the duties for the administration of the affairs of the Commission and may employ such persons as are necessary to carry out these functions, with the exception of Commission Counsel, who is employed by the Commission pursuant to NRS 281A.250.

G. Telecommuting employees who are not exempt from the overtime requirements of the Fair Labor Standards Act (FLSA) will be required to record all hours worked in a manner designated by Commission. Telecommuting employees will be held to the same standard of compliance as primary workplace-based employees. The agreed upon work schedule shall comply with FLSA regulations. For non-exempt employees, hours in excess of the regular work schedule must be pre-approved by the Supervisor.

2. DEFINITIONS

Alternative Work Location: An appropriate and approved work site other than the employee's duty location.

Duty Location: An established permanent work location at the Commission's official office. The Duty Location shall be each employee's primary work location.

Planned Telecommuting: A telecommuting workday planned in advance with approval from the Supervisor.

Supervisor: The Executive Director or if he is unable to perform the administrative matters under this policy, Commission Counsel is designated as the authorized designee.

Telecommuting: Working at an alternative work location that is away from the employee's duty location pursuant to an executed Telecommuting Agreement or as may be directed by Supervisor or the Governor in emergency, hazardous weather, or other supporting situations.

Telecommuting Agreement: The written agreement between the Supervisor and the employee that details the terms and conditions of an employee's work away from their duty location.

Unplanned Telecommuting: A telecommuting workday that is not planned in advanced as a result of an emergency, hazardous weather, or other unforeseen circumstances.

Work Schedule: The employee's regularly assigned days and hours of work.

3. PROCEDURE

A. Eligibility

Not all positions are appropriate for telecommuting and criteria may be individualized due to programmatic needs; however, the primary consideration will be whether the telecommuting arrangement meets the

needs of the Commission. The telecommuting employee, Supervisor, or Commission may end the telecommuting arrangement at any time, with or without notice.

- (1) Supervisor must determine an employee's readiness and monitor an employee's ability to telecommute.
- (2) Employee must be able to work independently and manage their time efficiently such that required tasks, timelines, and job duties are met.
- (3) Employee must not have been the subject of any disciplinary action within the past year.
- (4) Employee must be a permanent full/part-time employee.

B. Employee Telecommuting Agreement (Form)

- (1) The Employee Telecommuting Agreement must be completed and signed by the telecommuting employee and Supervisor. The Supervisor is required to maintain the signed form in the record of the Commission and provide a copy to the employee.
- (2) The Telecommuting Agreement form must establish procedures for both planned and unplanned telecommuting.

C. Employee Rights and Responsibilities

- (1) Except as specified in this policy or agreed to in the Telecommuting Agreement signed by the employee, employee rights and responsibilities are not affected by participation in a telecommuting program.
- (2) The employee must be able to work from an alternative environment without compromising tasks, functions, productivity, and confidentiality associated with the position's job duties.
- (3) The employee will be accountable to meet all expectations as outlined in their work performance standards.
- (4) The employee will adhere to the same policies, regulations, and performance expectations established for all Commission employees and pursuant to the employee's work performance standards.
- (5) Employees are permitted to take their allotted rest and meal breaks in accordance with regulation and policy.

- (6) Employee shall be reachable by phone, email, and messaging platforms such as Microsoft Teams and Zoom during scheduled work hours.
- (7) Employee and Supervisor will develop accountability tools to capture start/end times, assignment completion, and to monitor workload.
- (8) The employee will maintain professional behavior, appearance, and work attire during scheduled work hours.
- (9) It is the responsibility of the employee to maintain a professional work environment keeping interruptions by visitors, family members, and others to a minimum.
- (10) Annual leave and sick leave must be requested and used in the same manner as if the employee is at their normal duty location.
- (11) Telecommuting is not a substitute for taking sick leave when you are sick, or for taking annual leave when you have non-work-related activities to attend to or supervise in your home.
- (12) If there is an emergency at the telecommuting workplace, such as a power outage or internet outage, the employee will notify the Supervisor as soon as possible. The employee may be reassigned to the primary workplace or an alternate workplace in such cases or be required to take leave.
- (13) As required by the Telecommuting Agreement or upon at least 4 hours' notice (unless an emergency situation arises) by the Supervisor, the employee will attend job-related meetings, training sessions, appointments, or other work-related matters at their regularly assigned duty station, another State facility or office used by the Commission, or a community setting.
- (14) In emergency situations, the Supervisor must provide sufficient notice to allow the employee a reasonable time to travel to their primary workplace. The employee shall be prepared to be called to their regular duty location or a community location at any time.

D. Equipment

- (1) Commission may supply equipment for use at an alternative work location based on available resources and the needs of the Commission. Equipment supplied by Commission is to be used for business purposes only. Except for reasonable or normal wear and tear on the equipment, it is the employee's responsibility to replace damaged or lost equipment provided by

Commission. The Commission will not supply, pay the costs for, or subsidize at-home internet costs, including but not limited to upgraded internet quality.

- (2) Should the Commission not provide equipment for use at an alternative work location, the employee shall be responsible for purchasing and/or utilizing their own equipment at their own cost. If the employee does not have adequate equipment, their telecommuting agreement will not be approved.
- (3) Adequate equipment includes appropriate furniture (e.g., desk, table, chair), computer and applicable accessories (e.g., mouse, keyboard), video capability (built-in or external webcam), phone (landline or mobile), and reliable internet access. Commission reserves the right to make determinations as to appropriate equipment, subject to change at any time.
- (4) Video will be activated at all meetings unless approval is requested and provided by the Supervisor on a case-by-case basis.
- (5) Equipment supplied by the employee is the responsibility of the employee to maintain, and the employee agrees to take appropriate action to protect the items from damage or theft, normal or reasonable wear and tear excepted. Commission accepts no responsibility for damage or repairs to employee-owned equipment.
- (6) Commission may provide a computer workstation at the employee's primary workplace that the employee may access by remote desktop software via VPN (Virtual Private Network). If the employee requires VPN access, all requirements set forth in the VPN agreement must be adhered to at all times.
- (7) The Mobile Device Agreement will list all equipment the employee is moving to the alternative work location and must be completed and signed by the telecommuting employee and the Supervisor prior to any equipment being removed from a primary work location.

- (8) The employee is responsible for safe transportation and set-up of all Commission equipment unless the equipment is being specifically ordered for the employee and is being directly delivered to the alternative workplace. Before removing any equipment from Commission primary workplace or receiving any equipment through direct delivery, the employee must complete the Telecommuting Agreement.
- (9) Commission will repair and maintain equipment provided to the employee for telecommuting purposes. Except those services available by State of Nevada, Department of Administration, Enterprise Information Technology Services (“EITS”) for remote equipment, Commission will not be available to assist or troubleshoot any issues outside the employee’s primary workplace and it is the employee's responsibility to safely transport the equipment to their primary workplace or any other designated Commission workplace as instructed by the Supervisor or EITS.
- (10) Surge protectors or other protective devices must be used with any Commission computers and all current virus protections and security measures recommended by EITS must be installed and operating.
- (11) With the exception of normal wear and tear, Commission may pursue recovery from the employee Commission property/ equipment that is deliberately, or through negligence, damaged, destroyed, lost or stolen while in the employee's care, custody or control.
- (12) Upon termination of employment with Commission or when the telecommuting agreement ends, all Commission equipment/ property will be returned to Commission within 7 working days, unless other arrangements have been made. Failure to return equipment will result in referral to Capitol Police for investigation.

E. Confidentiality - Security

- (1) Commission information security procedures must be followed at all times, including safeguarding physical documents and electronic information.
- (2) Employee must demonstrate the ability to securely store sensitive data, confidential and/ or personal health information (PHI). Steps include the use of locked file cabinets and desks, regular password maintenance, and any other measures appropriate for the job and the environment.

- (3) Employee must protect all privileged user account passwords, Virtual Private Network Two-Factor Authentication Devices, Personal Identity Verification (PIV), personal identification numbers (PINs), etc. from unauthorized use, disclosure, or access.
- (4) Employee must maintain password security and update virus protection according to Commission standards.
- (5) Security and confidentiality shall be maintained by the employee at the same level as expected at all workplaces. Confidential and sensitive data should not be saved on the local computer. Restricted access or confidential material shall not be taken out of the primary workplace or accessed through a computer unless approved in advance by the Supervisor. The employee is responsible to ensure that non-employees do not access Commission data, including in print or electronic form.
- (6) **Intellectual Property:** Software products, documents, reports, data and records developed while telecommuting will be the property of Commission and are subject to the Commission's intellectual property policy. The employee must have a method to safeguard the security of all Commission data, reports including, but not limited to, intellectual property, proprietary information, confidential personnel information, Health Insurance Portability & Accountability Act (HIPAA) protected health information.
- (7) **Record Retention:** Software products/Application code, configuration files, reports, documents and records/data that are used, developed, or revised while telecommuting shall be copied or restored to the Commission' computerized record system/network drives/infrastructure. Maintenance of Commission records/data/reports must be consistent with the Commission's record retention rules and policy

F. Safety

- (1) An alternative work environment is expected to be maintained in a safe manner, free from all potential safety hazards. The employee is covered by Workers' Compensation for all job-related injuries that occur in the alternative designated workspace/environment during the employee's defined work period.

- (2) Employees must notify their Supervisor immediately and complete all necessary documents regarding a job-related injury. Workers' compensation does NOT apply to non-job-related injuries that might occur at the alternative work location.
- (3) The Supervisor must immediately process the information consistent with the requirements from the Risk Management found here: https://risk.nv.gov/Workers_Comp/SupervisorForms/
- (4) Workers' Compensation determinations are fact-dependent and made on a case-by-case basis. Completion of the requisite forms and cooperation with the Workers' Compensation process is critical to the review process and cooperation by the employee is essential.

G. Childcare/Dependent Care

- (1) Telecommuting is not designed as a replacement of appropriate childcare or dependent care. Modifications of an employee's schedule due to childcare should be requested and if approved, managed through an Alternative Work Schedule Agreement. Dependent care should not prevent the employee from reporting to their regular duty location and/or a community location at the request of the Supervisor with 48 hours' notice or on an emergent basis as described in Section C: Employee Rights and Responsibilities.

H. Approval/Denial/Termination Requirements

- (1) Approval or Denial of the Telecommuting Agreement will be determined by the Supervisor or designee. **DENIALS ARE NOT SUBJECT TO APPEAL.**
- (2) All approved Telecommuting Agreement forms shall be retained in the Commission's records, and the Supervisor is required to maintain the signed form and provide a copy to the employee.
- (3) Telecommuting arrangements may be terminated at any time and/or for any reason, without cause by the Supervisor or the Commission.
- (4) The Commission will try to provide the employee prior written notice when terminating the employee's telecommute agreement. However, this is not a requirement of the Commission and only a courtesy.

- (5) Employees who wish to terminate their Telecommuting Agreement should contact their Supervisor to determine if such a request will be considered. Upon approved by the Supervisor, employee takes full responsibility to return the Commission property/equipment within 7 working days to the Commission physical work location.
- (6) Except in the case of emergencies or for other reasons of good cause, no agreement shall be approved that has an employee scheduled for more hours per week in telecommuting status rather than at the employee's Duty Location.

I. Incident Response:

Telecommuting employee remote access users must report the following types of events when conducting work via remote access, to the Commission at ncoe@ethics.nv.gov.

- (1) Any event in which access to Commission data has been gained by an unauthorized person.
- (2) Any event in which a device containing Commission information has (or might have been) lost, stolen, or infected with malicious software (viruses, etc.).
- (3) Any event in which an account belonging to an employee that has access to Commission data might have been compromised or the password shared with an unauthorized person (responding to phishing emails, and writing down your password, etc.).

J. COMMISSION OPERATIONS:

The Supervisor must keep continued and effective commission operations as the priority when evaluating telecommuting agreements and schedules. Telecommuting agreements must not adversely affect:

- (1) The Commission's open office hours,
- (2) The ability to respond to inquiries from the public, or
- (3) The timely and effectively processing of complaints, investigations, advisory opinions, and education/outreach.

Telecommuting agreements and schedules should be regularly reviewed to ensure effective Commission operations. At least annually, the Executive Director shall present information to the Commission on the status and efficacy of the telecommuting policy.



NEVADA COMMISSION ON ETHICS EMPLOYEE TELECOMMUTING REQUEST AGREEMENT

This document is intended to ensure that both the supervisor and the employee have a clear, shared understanding of the employee's telecommuting arrangement. Each telecommute arrangement is unique depending on the needs of the position, the supervisor, and the employee.

Section A: Employee Information	
Employee Name:	
Job Title:	
Supervisor:	
Duty Location:	
Telecommute Location:	

Section B: Job Duties	
What are your primary job duties and responsibilities?	
Which of these responsibilities do you believe are conducive to telecommuting and how?	
Which of these responsibilities are not conducive to telecommuting?	

Section C: Telecommuting Location and Equipment	
Describe your proposed telecommute alternative work location:	
What kind of equipment would be required to facilitate work at that location?	
How will you secure confidential information at this work location?	
Why do you think a telecommuting arrangement is beneficial to the Commission/State?	

Section D: Contact During Telecommuting	
Contact information for telecommuting days:	
Agreement for checking in on telecommuting days:	

Employee Responsibilities and Understanding

Telecommuting is an arrangement in which the Supervisor may permit employee to work at home in lieu of traveling to his/her usual duty location. However, any telecommuting a Supervisor permits shall be only in accordance with this agreement.

The telecommuting program is not an employee benefit, but rather a work alternative based upon the job content, satisfactory work performance, and work requirements of the Commission and for the convenience of the Commission.

The Supervisor may end the telecommuting arrangement at any time, without prior notice.

Business needs take precedence over telecommuting days. Employee will forego telecommuting, if needed for business needs or meetings, or at the direction of the supervisor, on the regularly scheduled telecommuting day.

Workplace Location and Surroundings.

1. Unless otherwise specified in the written agreement, the employee is responsible for providing an appropriate and safe workspace, including all necessary equipment to perform their normal job functions. Equipment supplied by the State is to be used for business purposes only. Any additional financial burden, not included in the written agreement, resulting from the telecommuting arrangement, is solely the responsibility of the employee;
2. Maintain work surroundings that are professional, and not subject to noise or distraction;
3. Keeping the work area free from dangerous or safety hazards. The Commission shall not be responsible for any modifications, maintenance or remodeling to my home related to my alternative work location.
4. At all times, employee shall follow policies, rules and regulations normally applicable to the employee while working in the regular duty location.
5. If a work-related injury occurs, employee will report it immediately to their supervisor. An injury may be compensable under workers' compensation law only if it occurs in the designated workspace during my designated working hours.
6. All confidentiality requirements and protections must be met during performance of the employee's job duties and after hours in the employee's designated workspace.

Supervisor Responsibilities and Understanding

The supervisor shall evaluate the following prior to approving an employee's Telecommuting Arrangement request:

1. The suitability of essential functions, job responsibilities and duties for a telecommuting arrangement taking into consideration the nature of the employee's job is conducive to telecommuting;
2. The employee's suitability for telecommuting.

A written agreement and inventory list will be prepared outlining any equipment that will be provided to the employee.

The employee will be given as much advance notice as possible if the employee will be needed in the office on the regularly scheduled telecommute day.

Each telecommuting agreement will be discussed and renewed at least annually, or whenever there is a major job change.

Telecommuting is selected as a feasible work option based on a combination of job characteristics, employee performance, and Commission needs, a change in any one of these elements, therefore, will require a review of the telecommuting agreement in order to determine further need.

Unless otherwise specified in this document the supervisor may end a telecommuting arrangement at any time, for any reasons. Generally, the telecommuter will be provided with one days' notice of changes to the telecommuting arrangement, but this is not a requirement.

Employees who wish to withdraw from a regular telecommuting arrangement prior to the approved expiration period should contact their supervisor to inquire about the approval of such a request.

Confirmation and Agreement	
I have read this agreement. If approved, I hereby agree to abide by the terms of the Telecommuting Policy, the Telecommuting Agreement and all other Commission policies and procedures.	
Employee Name	
Signature	
Date	
Approval	
Supervisor Name:	
Signature:	
Date:	

Attachment B

Self-certification Safety Checklist for Telecommuters

The following checklist is designed to assess the overall safety of your alternative worksite. Please read and complete the self-certification safety checklist. Upon completion, you and your supervisor should sign and date the checklist in the space provided.

You must designate an area of your home as your work area. You must immediately report any health or safety incidents that occur while working at home to your Supervisor and comply with standard workplace injury protocols.

Per the Occupational Safety and Health Administration (OSHA), the State is not responsible for the safety conditions within your home. However, should you desire a safety/ergonomic evaluation, one can be arranged through the Risk Management Division.

Name:	
Telecommuting Location:	
Describe designated work area in the alternate duty station:	

General Workspace Questions	Yes	No
Are temperature, noise, ventilation, and lighting levels adequate for maintaining normal level of job performance?		
Are all stairs with four or more steps equipped with handrails?		
Are all circuit breakers and/or fuses in the electrical panel labeled as to intended services?		
Do circuit breakers clearly indicate if they are in the open or closed position?		
Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, exposed wires to ceiling, etc.)?		
Are aisles, doorways, and corners free of obstructions to permit visibility and movement?		
Are file cabinets and storage closets arranged so drawers and doors do not open into walkways?		
Do chairs have any loose casters (wheels) and are the chair rungs and legs of sturdy?		
Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard?		
Is the office space neat, clean, and free of excessive amounts of combustibles?		
Are floor surfaces clean, dry, level and free of worn or frayed seams?		
Is there enough light for reading?		
Computer Workstation		
Is your chair adjustable or otherwise suitable for a workstation?		
Are your feet on the floor or fully supported by a footrest?		
Are you satisfied with the placement of your monitor and keyboard?		
Is it easy to read the text on your screen?		
Do you have enough leg room at your desk?		
Is the screen free from noticeable glare?		
Is the top of your screen eye level?		
Is there space to rest the arms while not keying?		
When keying, are your forearms close to parallel with the floor?		
Are your wrists fairly straight while keying?		

Employee Signature _____ Date _____

Supervisor Signature _____ Date _____

Agenda Item 6



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Steven Morris**, former City Attorney,
City of Boulder City, State of Nevada,

Ethics Complaint
Case No. 20-007C

Subject. /

PROPOSED
STIPULATION TO ENTER CONSENT ORDER RESOLVING
ETHICS COMPLAINT WITH REMEDIAL ACTION
AND
CONSENT ORDER

1. **PURPOSE:** Pursuant to NRS 281A.135, NRS 281A.780 and NRS 281A.785(1)(c), the Parties request that the Commission enter a consent order (“Consent Order”) resolving Ethics Complaint Case No. 20-007C, concerning Steven Morris (“Morris”), former City Attorney, City of Boulder City (“City”), Nevada by requiring Morris to complete training on Nevada’s Ethics in Government Law, set forth in NRS Chapter 281A (“Ethics Law”) and the institution of other remedial actions, as detailed herein.

2. **JURISDICTION:** At all material times, Morris served as a public officer for Boulder City, as defined in NRS 281A.160 and 281A.182. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Morris in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about January 23, 2020, the Commission received this Complaint and issued its *Order on Jurisdiction and Investigation* on March 9, 2020 directing the Executive Director to investigate allegations that Morris violated NRS 281A.420(1) and (3).
- b. On March 9, 2020, the Executive Director issued a *Notice of Complaint and Investigation* pursuant to NRS 281A.720 and Morris was provided an opportunity to provide a written response to the Complaint.

- c. Morris, through his legal counsel, Brian R. Hardy, Esq. of Marquis Aurbach Coffing law firm, provided a written response on or about April 13, 2020.
- d. On or about May 14, 2020, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.720.
- e. A Panel Determination issued on May 21, 2020 concluded that:
 - 1) Credible evidence supported just and sufficient cause for the Commission to render an opinion in the matter regarding the alleged violations of NRS 281A.420(1) and (3) related to Morris' alleged failure to disclose and abstain from acting on an agenda item before the Boulder City Council concerning his employment contract as City Attorney; and
 - 2) The matter should be referred to the Commission for adjudicatory proceedings.
- f. Morris provided a supplemental response to the Complaint as well as documents in support of his supplemental response on or about July 27, 2021.
- g. In lieu of an adjudicatory hearing before the Commission, Morris and the Commission request the Commission resolve the Complaint by Consent Order upon the stipulated terms set forth herein.
- h. No findings have been made by the Review Panel or the Commission that Morris violated the Ethics Law, and this Stipulation and Consent Order do not constitute an admission by Morris of any violation of the Ethics Law.

4. TERMS AND CONDITIONS: Based on the foregoing, Morris and the Commission agree to issuance of a Consent Order based upon the following stipulated terms and conditions:

- a. Pursuant to NRS 281A.135, the Commission may render an opinion to resolve an ethics complaint. The definition of "opinion" includes the disposition by consent order, as authorized by NRS 233B.121.
- b. NRS 233B.121(5) provides unless precluded by law, informal disposition of a case may be made by stipulation, agreed settlement, consent order or default.

PROPOSED

- If an informal disposition is made, the parties waive the requirements for findings of fact and conclusions of law.
- c. Pursuant to NRS 281A.780, the Commission has authority in proceedings concerning an ethics complaint, to issue a confidential letter of caution or instruction to the public officer or public employee regarding the propriety of their alleged conduct under the statutory ethical standards set forth in the Ethics Law.
 - d. Morris knowingly and voluntarily waives his right to a hearing before the Commission on the allegations set forth In Ethics Complaint Case No. 29-007C including issuance of findings of facts and conclusions of law in order to permit issuance of the Consent Order.
 - e. Morris knowingly and voluntarily waives his right to any judicial review of this mater as provided in NRS Chapter 281A, NRS Chapter 233B and any other available provision of law.
 - f. The Parties agree that the issuance of a Consent Order that includes issuance of a confidential letter of instruction and Morris' compliance with a course of remedial action will appropriately address the terms and conditions of NRS 281A.785(1)(c), based upon the following reasons:
 - 1) Morris has not previously been the subject of any violations of the Ethics Law.
 - 2) Morris is no longer a public officer or employee.
 - 3) Morris has been diligent to cooperate with and participate in the Commission's investigation and resolution of this matter.
 - 4) Morris did not receive any financial benefit as a result of his alleged conduct.
 - 5) Prior to Morris's participation in the subject agenda item:
 - a. Morris corresponded with the Mayor regarding the list of items the Mayor had requested be placed on the agenda given that Nevada Open Meeting Laws require that a meeting agenda consist of a clear and complete statement of the topics scheduled to be

PROPOSED

considered during the meeting¹ and as noted by the Nevada Supreme Court, “[t]he Legislature evidently enacted [such statutes] to ensure that the public is on notice regarding what will be discussed at public meetings”. By not requiring strict compliance with agenda requirements, the “clear and complete” standard would be rendered meaningless because the discussion at a public meeting could easily exceed the scope of a stated agenda topic, thereby circumventing the notice requirement.²

- b. Morris has asserted that he was not opining on the subject matter of the agenda item; rather, he was trying to assist the Mayor in crafting an agenda description which would provide a clear and complete statement in compliance with Nevada Open Meeting law.
- c. Morris notified the Mayor in writing that, based upon the vague wording of the agenda item, there could be circumstances in which the agenda item could cause a conflict of interest and/or require disclosure but that, based upon the language proposed by the Mayor, it was not clear whether such conflict actually existed and whether disclosure would be required.
- d. The agenda item at issue was not "clear and complete" such that Morris had difficulty in ascertaining whether such created a conflict of interest and/or disclosure requirement.
- e. As such, Morris requested the Mayor provide him with additional information that would provide clarity on what the agenda item was addressing so he could make such a determination.
- f. The only additional information provided by the Mayor was a Memorandum to the City Clerk which did not provide any additional clarity to the proposed agenda item descriptions.

¹ See NRS 241.020(3)(d)(1).

² See *Sandoval v. Bd. of Regents of Univ.*, 119 Nev. 148, 154, 67 P.3d 902, 905 (2003).

PROPOSED

- g. Upon reviewing the additional information, Morris again reached out to the Mayor requesting information on the agenda item so that he could avoid any potential conflict or any violation of the Open Meeting Law.
- h. During the meeting, Morris, as the City Attorney, never “approve[d], disapprove[d], vote[d], abstain[ed] from voting or otherwise act upon a matter .. [i]n which [Morris had] a significant pecuniary interest.”³ Morris simply voiced his objection to the way the item had been identified on the agenda in an effort to protect his client (the City of Boulder City) from potential Open Meeting Law violations. The minutes reflect the following:

City Attorney Morris repeated his objection to Item No. 18. He stated he had an ongoing obligation to protect the City Council from possible Open Meeting Law violations. He said he could not determine if a conflict had occurred without more specificity on the agenda title. He added that matters of public concern require a heightened obligation of specificity. He said the item completely lacked specificity. He said there were many problems with the agenda title and it was not due to a lack of trying to obtain the specificity by City staff. He noted the Mayor and Council always had the ability to meet with him and others to help with formulating an appropriate agenda title. He stated there were not just implications with the Open Meeting Law, but with the Charter and State law as well.

- i. Finally, the Mayor unilaterally withdrew relevant portions of the subject agenda item after the regular agenda was approved by a majority of the Council, and the remaining agenda items in question failed to pass in a 2-2 vote.

³ See NRS 281A.420(1)(b).

- 6) Morris has submitted evidence that he was the target of an ongoing retaliatory campaign by the Mayor and members of the community rooted in personal animus.
 - 7) Morris currently maintains a civil action against the City and others based upon the conduct of the Mayor and others in the Eighth Judicial District Court styled as Case No. A-20-818973-C.
- g. If Morris accepts a future appointment as a public officer or employee or accepts employment representing a public body within two-years from the date of the approval of this Consent Order by the Commission (“Compliance Period”), he must comply in all material respects with the provisions of NRS Chapter 281A during the Compliance Period without being the subject of another ethics complaint arising from an alleged violation which occurs during the Compliance Period and for which a Review Panel determines that there is just and sufficient cause for the Commission to render an opinion in the matter.
 - h. Morris must also attend and complete ethics training within six (6) months of accepting an appointment as a public officer or employee during the Compliance Period.
 - i. The Parties consent to the Commission’s issuance of a Confidential Letter of Instruction advising Morris about the implications of the Ethics Law, and pursuant to NRS 281A.780, the Letter of Instruction is confidential.
 - j. If Morris does not accept a future appointment as a public officer or employee during the Compliance Period, there is no performance due by Morris, and the Complaint, and this matter, will be dismissed with prejudice as set forth herein.
 - k. Although Morris has not been a public officer or employee since October 13, 2020, the Commission acknowledges that Morris may serve as a public officer or employee during the term of this Stipulation and Consent Order, and the Commission retains jurisdiction over Morris for purposes of ensuring compliance herewith, and reserves jurisdiction and all authority to consider any separate proceedings filed with the Commission.
 - l. During the Compliance Period, the Executive Director shall monitor Morris’ compliance with this Consent Order. Should the Executive Director discover

PROPOSED

that Morris has not complied with any term or condition of this Consent Order, the Executive Director shall:

- 1) Inform the Commission of any alleged failure of Morris to comply with the Consent Order;
- 2) Give Morris written notice of any alleged failure to comply with the Consent Order; and
- 3) Allow Morris not less than 15 days to respond to such a notice.

m. If the Commission finds that there is substantial evidence that Morris failed to comply with the terms and conditions of this Consent Order, the Commission may vacate the Consent Order and conduct further proceedings in this matter, including an adjudicatory hearing.

At the expiration of the Compliance Period, so long as Morris has complied with the terms and conditions of the Consent Order, the Complaint shall be dismissed with prejudice.

5. **ACCEPTANCE:** We, the undersigned parties, have read this foregoing Stipulation for Consent Order, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this stipulation during the regular meeting of the Commission on February 16, 2022 and thereafter if the Consent Order is issued by the Commission.⁴

DATED this ____ day of _____, 2022. DRAFT
Steven Morris

The above Stipulation for Consent Order is approved by:

FOR STEVEN MORRIS

DATED this ____ day of _____, 2022. DRAFT
Brian R. Hardy, Esq.
Marquis Aurbach Coffing

⁴ Subject waived any right to receive written notice pursuant to NRS 241.033 of the time and place of the Commission's meeting to consider his character, alleged misconduct, professional competence, or physical or mental health.

FOR ROSS E. ARMSTRONG, ESQ.
Executive Director
Nevada Commission on Ethics

DATED this ____ day of _____, 2022. DRAFT
Elizabeth J. Bassett, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this ____ day of _____, 2022. DRAFT
Tracy L. Chase, Esq.
Commission Counsel

CONSENT ORDER

The above Stipulation is accepted by the majority of the Commission.⁵

It is so ordered:

DATED _____, 2022.

By: DRAFT
Kim Wallin, CPA, CMA, CFM
Chair

By: DRAFT
Thoran Towler, Esq.
Commissioner

By: DRAFT
Teresa Lowry, Esq.
Commissioner

By: DRAFT
James Oscarson
Commissioner

By: DRAFT
Damian R. Sheets, Esq.
Commissioner

⁵ Commissioner/Presiding Officer Gruenewald, Vice-Chair Duffrin and Commissioner Yen participated in the Review Panel hearing and are therefore precluded from participating in the Commission's consideration of this Stipulated Agreement pursuant to NRS 281A.220(4).

PROPOSED



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Steven Morris**, former City
Attorney, City of Boulder City,
State of Nevada,

Ethics Complaint
Case No. 20-007C

Subject. /

**NOTICE OF HEARING TO CONSIDER STIPULATION TO ENTER
CONSENT ORDER RESOLVING ETHICS COMPLAINT WITH REMEDIAL
ACTION AND CONSENT ORDER**

NRS 281A.745

PLEASE TAKE NOTICE, the Nevada Commission on Ethics ("Commission") will hold a public meeting to consider a **Proposed Stipulation to Enter Consent Order Resolving Ethics Complaint with Remedial Action and Consent Order** ("Stipulation") regarding the allegations submitted in Ethics Complaint No 20-007C at the following time and location:

When: Wednesday, **February 16, 2022** at **9:30 a.m.**

Where: **Zoom Meeting:**

<https://us06web.zoom.us/j/81741817354?pwd=UFBmQnh1Ris2dEhZNnluWjVFcEVOZz09>

Zoom Meeting Telephone Number: 669-900-9128*

Meeting ID: 817 4181 7354

Passcode: 614991

Subject has waived the personal notice requirements of NRS 241.033 (Nevada's Open Meeting Law). If the Proposed Stipulation is approved, it will resolve this matter pursuant to NRS 233B.121, NRS 281A.135 and NRS 281A.770.

DATED: February 9, 2022

/s/ Tracy L. Chase

Tracy L. Chase, Esq.
Commission Counsel

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the foregoing **Notice of Hearing to Consider Stipulation to Enter Consent Order Resolving Ethics Complaint with Remedial Action and Consent Order** in the captioned matter via electronic mail to the Parties as follows:

Ross Armstrong, Esq.
Executive Director
Elizabeth J. Bassett, Esq.
Associate Counsel
Kari Pedroza, Executive Assistant
704 W. Nye Lane, Suite 204
Carson City, NV 89703

Email: rarmstrong@ethics.nv.gov

Email: ebassett@ethics.nv.gov

cc: k.pedroza@ethics.nv.gov

Steven Morris
c/o Brian R. Hardy, Esq.
Michelle Monkarsh
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

Email: bhardy@maclaw.com
cc: mmonkarsh@maclaw.com

DATED: February 9, 2022



Employee of the Nevada Commission on Ethics



RECEIVED

JAN 23 2020

COMMISSION
ON ETHICS

NEVADA COMMISSION ON ETHICS
ETHICS COMPLAINT
NRS 281A.700 to 281A.790

1. **SUBJECT OF THE COMPLAINT** (person you allege violated provisions of NRS Chapter 281A, the Nevada Ethics in Government Law. *(Please use a separate form for each individual.)*)

Subject NAME:	Steven Morris		TITLE OF PUBLIC OFFICE: <small>(Position)</small>	City Attorney
PUBLIC ENTITY: <small>(Name of the entity employing this position)</small>	City of Boulder City			
ADDRESS:	401 California Avenue	CITY, STATE, ZIP CODE	Boulder City, NV 89005	
TELEPHONE:	<small>Work:</small> 702-2939238	<small>Other: (Home, cell)</small>	EMAIL:	SMorris@bcnv.org

2. Describe the alleged conduct of the public officer or employee (subject) that you believe violated NRS Chapter 281A. *(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 Letter and Exhibits.

3. Is the alleged conduct currently pending before another administrative, law enforcement or judicial body? If yes, describe:

Yes. The AG's Office regarding an Open Meeting Law Complaint, OAG File No. 13897-354. See attached Letter and Exhibits.

4. NRS Chapter 281A requires public officers and employees to hold public office as a public trust and avoid conflicts between public duties and private interests. (NRS 281A.020) What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Statutory Summary
<input type="checkbox"/>	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity for himself or person to whom he has a commitment in a private capacity 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.
<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 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.
<input type="checkbox"/>	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for himself or any person to whom he has a commitment in a private capacity for the performance of his duties as a public officer or employee.
<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 or the interests of any person to whom he has a commitment in a private capacity.
<input type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his significant personal or pecuniary interest, or any person to whom he has a commitment in a private capacity. (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 pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Representing or counseling a private person for compensation on an issue pending before a public agency while employed, or within 1 year after leaving the service of a public agency, including before any state agency of the Executive or Legislative Department. (State and local legislators and part-time public officers and employees may represent/counsel private persons before agencies they do not serve, except local legislators may not represent/counsel private persons before other local agencies within the same county.)
<input checked="" type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceeding year that is reasonably affected by an official matter.
<input checked="" type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.
<input type="checkbox"/>	NRS 281A.430	Bidding on or entering into a government contract in which he has a significant pecuniary interest. (Some exceptions apply).
<input type="checkbox"/>	NRS 281A.500	Failing to file or timely file a Nevada Acknowledgment of Ethical Standards for Public Officers form.
<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.
<input type="checkbox"/>	NRS 281A.550	Negotiating or accepting employment from a business or industry regulated by or contracted with former public agency within one year after leaving service of the agency. (Failing to honor the one-year "cooling off" period after leaving public service, exceptions).

* Pursuant to NRS 281A.065, a public officer or employee has a commitment in a private capacity to the following persons/entities:

1. Spouse; domestic partner.
2. Household member.
3. Family member within 3rd degree of consanguinity/affinity.
4. Employer or spouse/domestic partner/household member's employer.
5. Substantial and continuing business relationships, i.e. partner, associate, or business entity.
6. Substantially similar relationships to those listed above, including close, personal relationships akin to family and fiduciary relationships to business entities.

5. **YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS.** (NRS 281A.710 through 281A.715.)
Attach all documents or items you believe support your allegations, including witness statements, public or private records, audio or visual recordings, documents, exhibits, concrete objects, or other forms of proof.

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

6. Witnesses: Identify 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)	Mayor Kiernan McManus		
ADDRESS:	401 California Avenue	CITY, STATE, ZIP	Boulder City, NV 89005
TELEPHONE:	Work: 702-933-4444 (Counsel)	Other: (Home, cell)	E-MAIL: noah@allisonnevada.com
NATURE OF TESTIMONY:	See attached Letter and Exhibits.		
NAME and TITLE: (Person #2)	Council Member Tracy Folda		
ADDRESS:	401 California Avenue	CITY, STATE, ZIP	Boulder City, NV 89005
TELEPHONE:	Work: 702-933-4444 (Counsel)	Other: (Home, cell)	E-MAIL: noah@allisonnevada.com
NATURE OF TESTIMONY:	See attached Letter and Exhibits.		

7. REQUESTER INFORMATION:

YOUR NAME:	Noah G. Allison, Esq. on behalf of Kiernan McManus and Tracy Folda		
YOUR ADDRESS:	3191 East Warm Springs Rd.	CITY, STATE, ZIP:	Las Vegas, NV 89120
YOUR TELEPHONE:	Day: 702-933-4444	Evening: 702-501-5472	E-MAIL: noah@allisonnevada.com

Your identity as the Requester will be provided to the Subject if the Commission accepts jurisdiction of this matter, unless:

Pursuant to NRS 281A.750, I request that my identity as the requester of this Ethics Complaint remain confidential because (please check appropriate box):

I am a public officer or employee who works for the same public body, agency or employer as the subject of this Ethics Complaint. Provide evidence in the text box below, or as an attachment, of your employment with the same public body, agency or employer.

OR

I can show a reasonable likelihood that disclosure of my identity will subject me or a member of my household to a bona fide threat of physical force or violence. Describe in the text box below, or in an attachment, the facts and circumstances that support a reasonable likelihood of a bona fide threat of physical force or violence.

A copy of this Complaint will be provided to the Subject. If your request for confidentiality is approved by the Commission, the Complaint will be redacted to protect your identity as the Requester. The Commission may decline to maintain the confidentiality of your identity as the Requester for lack of sufficient evidence of your employment status with the same public body, agency or employer, or proof of a bona fide threat of physical force or violence.

If the Commission declines to maintain my confidentiality, I wish to:

Withdraw my Complaint OR

Submit the Complaint understanding that the Subject will know my identity as the Requester.

By my signature below, I 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 regarding these allegations. I acknowledge that this Ethics Complaint, the materials submitted in support of the allegations, and the Commission's investigation are confidential unless and until the Commission's Review Panel renders a determination. Certain Commission proceedings and materials, including the Investigatory File remain confidential pursuant to NRS 281A.750 through 281A.760.



 Signature:

Jan. 23, 2020

 Date:

Noah G. Allison

 Print Name:

You may file a Complaint using the Commission's online form submission at ethics.nv.gov (Preferred) or You must submit this form bearing your signature to the Executive Director via: **delivery/mail** to Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City, Nevada, 89703, **email** to NCOE@ethics.nv.gov, or **fax** to (775) 687-1279

NOAH G. ALLISON
MICHELLE L. ALLISON



THE ALLISON LAW FIRM CHTD.

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
MARTINDALE AV RATED

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January 23, 2020

VIA US MAIL & E-MAIL – jtaruc@ag.nv.gov
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VIA E-MAIL – NCOE@ethics.nv.gov
Yvonne Nevarez-Goodson, Executive Director
NEVADA COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, NV 89703

Re: *City Council of Boulder City – Open Meeting Law Complaint*
OAG File No. 13897-354
Nevada Commission on Ethics
Ethics Complaint Against City Attorney Steven Morris

Dear Mr. Taruc and Ms. Nevarez-Goodson:

This firm represents Boulder City Mayor Kiernan McManus (“McManus”) in his individual capacity regarding the above-referenced matter. We also represent Boulder City Councilwoman Tracy Folda (“Folda”) in her individual capacity. This letter and the attached exhibits are intended to serve the following two purposes:

1. McManus’s and Folda’s individual responses to the Letter from the Office of the Attorney General (“AG Office”) dated December 23, 2019 enclosing the Open Meeting Law Complaint (“OML Complaint”) filed by Margaret R. (Peggy) Leavitt on or about December 18, 2019, OAG File No. 13897-354; and
2. McManus’s and Folda’s complaint to the Nevada Commission on Ethics (“Ethics Commission”) concerning potential violations of NRS Chapter 281A by Boulder City Attorney Steven Morris regarding the facts and circumstances of the OML Complaint.

McManus’s and Folda’s response to the AG Office is guided by Chapter 241 of the Nevada Revised Statutes, related case authority, and past Open Meeting Law complaint dispositions and opinions by the AG Office. McManus’s and Folda’s complaint to the Ethics Commission is guided by Chapter 281A of the Nevada Revised Statutes.

LIST OF ATTACHED EXHIBITS

- Exhibit 1: Declaration of Kiernan McManus.
- Exhibit 2: Declaration of Tracy Folda.
- Exhibit 3: Letter from Justin R. Taruc Dated December 23, 2019 with Enclosures.
- Exhibit 4: Boulder City Charter.
- Exhibit 5: Memorandum Dated October 3, 2019.
- Exhibit 6: October 7, 2019 Email from Morris to McManus.
- Exhibit 7: October 7, 2019 Email from McManus to Morris.
- Exhibit 8: Memorandum Dated October 14, 2019.
- Exhibit 9: October 15, 2019 Email from Morris to McManus.
- Exhibit 10: Memorandum Dated October 15, 2019.
- Exhibit 11: October 15, 2019 Email Between McManus and Krumm.
- Exhibit 12: Agenda for October 22, 2019 City Council Meeting.
- Exhibit 13: October 17, 2019 Email from Detmer to McManus.
- Exhibit 14: Memorandum Dated October 18, 2019.
- Exhibit 15: City Council Regular Meeting Minutes October 22, 2019.
- Exhibit 16: January 9, 2020 Email from Morris.
- Exhibit 17: Nevada Commission on Ethics, Ethics Complaint, January 23, 2020.

I.

FACTUAL BACKGROUND/CHRONOLOGY OF EVENTS

1. McManus is the Mayor of Boulder City, Nevada. Exhibit 1. The Mayor of Boulder City serves as a member of the City Council. Exhibit 4. Folda is a Councilwoman of Boulder City, Nevada. Exhibit 2. Together, McManus and Folda represent two of the five seats on the City Council. Exhibit 4.

2. Among other powers, the City Council is vested with the power to appoint or remove from office the following City officers: (a) the City Manager; (b) the City Attorney; (c) the City Clerk; and/or (d) the Municipal Judge. Exhibit 4.

3. Steven Morris ("Morris") is the City Attorney of Boulder City, Nevada pursuant to a contract with the City. Exhibit 1. Among other duties, the City Attorney is required to advise the City Council, draft and review all contracts and other legal documents required or requested by the City Council or the City Manager, and perform other legal services as the Council may direct. Exhibit 4.

4. On October 3, 2019, McManus furnished a memorandum regarding "Request for 10/22/2019 Council Meeting Agenda Items" to Lorene Krumm ("Krumm"), City Clerk of Boulder City. Exhibit 5. The memorandum stated in relevant part:

Please include the following items for the City Council Meeting Agenda scheduled for October 22, 2019.

2) For possible action and direction to City Staff: Retention of a special counsel by the City Council to review and advise on the following issues.

- a) Nevada Open Meeting Law standards and requirements. [“Item 2(a)”]
- b) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney and Municipal Judge. [“Item 2(b)”]
- c) Other issues as determined by a majority of City Council. [“Item 2(c)”]

I will provide additional information for these items next week. Please let me know if there are any questions or concerns.

Exhibit 5.

5. On October 7, 2019, Morris sent a lengthy unsolicited email to McManus (copy to Krumm and City Manager Al Noyola) addressing Item 2 of the October 3, 2019 Memorandum. Exhibit 6. With respect to Item 2(a):

- Morris asserted the agenda item lacked a rationale “as to why or how the City Attorney would be unable to perform the duties of his office when it comes to advising the Council on the Nevada Open Meeting Law standards and requirements.” Exhibit 6.
- Morris asserted the agenda item lacked an “explanation within the agenda description of any legitimate ‘interest of the City’ that would require the employment of assistant or special counsel to review and advise the Council on Nevada Open Meeting Law standards and requirements.” Exhibit 6.
- Morris suggested alternative approaches to obtaining advice on Nevada Open Meeting Law standards and requirements. Exhibit 6.

With respect to Item 2(b):

- Morris asserted the City Attorney was supposed to be the legal advisor of the Council, but conceded there could be circumstances where the employment of special counsel may be appropriate when the City Attorney is unable to perform the duties of his office due to legal conflicts. Exhibit 6.
- Morris also asserted that “the current agenda statement is not ‘clear and complete’ and a higher degree of specificity is required to satisfy the open meeting laws as to what the Council will deliberate and potentially take action on.” Exhibit 6.

With respect to Item 2(c):

- Morris opined the agenda item was not “clear and complete” pursuant to NRS 241.020(2)(d)(1) and that the phrase “[o]ther issues as determined by a majority of City

Council” does not comply with the statute’s requirement that every agenda item contain a clear and complete statement of topics to be considered. Exhibit 6.

The topic of Item 2(b) was to hire special counsel to review Morris’s employment contract and advise the Council, yet *nowhere* in his email did Morris disclose to McManus that he had a significant pecuniary interest over whether Item 2(b) proceeded onto the agenda. Exhibit 6. *Nowhere* in his email did Morris recuse or disqualify himself from opining on the legitimacy of Item 2(b). Exhibit 6. Morris showed no restraint whatsoever. He instead used the power of his public office to protect his significant pecuniary interest by advising McManus in a manner intended to prevent Item 2(b) from getting on the October 23, 2019 meeting agenda. Exhibit 6.

6. McManus responded to Morris’s email advising that “it would have been best to wait for the additional information I will be providing before engaging in an analysis of my request for the inclusion of items on the upcoming Council meeting agenda.” Exhibit 7.

7. On October 14, 2019, McManus furnished Krumm with a memorandum regarding “Employment of Special Counsel to Advise City Council” and asked Krumm to “include the following memorandum regarding the possible retention of special counsel for the City Council Meeting Agenda scheduled for October 22, 2019.” Exhibit 8. McManus’s three-page memorandum provided further explanations for the agenda items criticized by Morris as not “clear and complete.” Exhibit 8. With respect to Item 2(a), McManus wrote:

I believe sufficient examples exist regarding conflicting information and interpretation of the Open Meeting Law that require the employment of a special counsel. There has been a finding of a violation of the Open Meeting Law regarding the need to provide information to the public. A recent violation has been alleged for improper notice of an agenda item. Other examples exist where the information provided to the Council has been contradictory or inconsistent.

Exhibit 8. With respect to Item 2(b), McManus wrote:

I believe the employment of a special counsel is needed to review the contracts of the Municipal Officers. The Officers defined by the City Charter as being the City Manager, the City Clerk, the City Attorney and the Municipal Judge. *There is an inherent conflict of interest present for the City Attorney to engage in a review of the contracts and advise the Council as his contract is one of the contracts to be reviewed.* Provisions in his contract are similar to the provisions in the other contracts.

Exhibit 8 (emphasis supplied). With respect to Item 2(c), McManus wrote:

Other City Council members may also discuss additional reasons for the need to employ a special counsel. The discussion may include the need to employ a special counsel for only one narrow issue or to employ a special counsel for a broader range of issues. The provision in the City Charter is broadly worded and the authority to employ a special counsel is at the discretion of a majority of the City Council.

Exhibit 8.

8. On October 15, 2019, Morris sent an email to McManus confirming receipt of the memorandum furnished to Krumm the day before. Exhibit 9. Morris asserted: “it remains my opinion that your proposed agenda items are not ‘clear and complete’ and therefore violate the OML.” Exhibit 9. Morris mentioned many things in his email, but the critical thing he *again* (second opportunity) did not mention was that the items he was advocating to keep off the agenda related to his personal, significant pecuniary interests and he again failed to recuse/disqualify himself. Exhibit 9. McManus’s concern over the “inherent conflict of interest” of a City Attorney offering advice over the handling of his own contract in his memorandum of October 14, 2019 did not deter Morris in the slightest. Exhibit 8; Exhibit 9.

9. McManus responded to Morris’s email with a memorandum regarding “Employment of Special Counsel – Discussion of Open Meeting Law Requirements.” Exhibit 10. McManus’s memorandum explained his disagreement with Morris’s opinion that the items violated the Open Meeting Law. Without the benefit of disinterested counsel advising him, McManus did an admirable job of interpreting and applying *Sandoval v. Board of Regents* to defend his reasons for putting the disputed items on the agenda.

10. Later on October 15, 2019, Krumm wrote an email to McManus inquiring:

For confirmation, you wish to proceed with Item No. 18 [Item 2] after receiving the City Attorney’s opinion on your supplemental material? You wish to attach your supplemental material along with the material provided to you by the City Attorney as backup to this item?

Exhibit 11. McManus responded:

You are correct. I wish to proceed with item no. 18 with the supplemental material and all materials that City Staff may have contributed on the item.

Exhibit 11. McManus thus directed Krumm to proceed with the agenda items but also directed her to include all of the memoranda, emails and additional materials from City Staff on the topic as part of the agenda materials made available to the public. Exhibit 11.

11. Krumm timely posted the agenda and the supporting materials identified by McManus. Items 2(a), 2(b) and 2(c) were listed as Item 18 on the agenda:

For Possible Action: Discussion and possible staff directive regarding retention of a special counsel by the City Council to review and advise on the following issues:

- A. Nevada Open Meeting Law standards and requirements.
- B. Employment contract of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge.
- C. Other issues as determined by a majority of City Council.

Exhibit 12.

12. On October 17, 2019, McManus spoke with Deputy Attorney General Mike Detmer of the Division of Boards and Open Government seeking guidance on the “clear and complete” rule for agenda items under the Open Meeting Law. Exhibit 13. Mr. Detmer referenced three OML opinions that could “provide guidance with the question [McManus] presented.” Exhibit 13. Those three OML opinions, OMLO 13897-215, OMLO 13897-204, and OMLO 13897-101 are a matter of public record. Exhibit 13.

13. On October 18, 2019, McManus sent a memorandum to Morris regarding “Employment of Special Counsel – Discussion of Open Meeting Law Requirements.” Exhibit 14. In the memorandum, McManus advised Morris of his conversation with Mr. Detmer and advised that his review of the OML opinions solidified his belief that the disputed agenda items meet the “clear and complete” standard. Exhibit 14. McManus therefore advised Morris he planned to proceed with the agenda items. Exhibit 14. Morris *again* (third opportunity) failed to disclose his significant pecuniary interest in Item 2(b) and failed to recuse/disqualify himself from vetting the agenda items.

14. The City Council Meeting occurred on October 22, 2019 at 7:00 p.m. Exhibit 15. After public comment¹, Morris recommended the removal of Item 18 (Items 2(a), 2(b) and 2(c)). Exhibit 15. Morris *again* (fourth opportunity) did *not* recuse himself or disclose his significant pecuniary interest in Item 18. McManus explained he had requested Item 18 and would not be removing it from the agenda. Exhibit 15. The agenda was approved by a vote of 3-1². Exhibit 15. McManus, Folda and Council Member Claudia Bridges voted in favor of passing the agenda, and Council Member James Howard Adams voted against approving the agenda. Exhibit 15.

The minutes for Item 18 below are provided below in their entirety:

18. For Possible Action: Discussion and possible staff directive regarding retention of a special counsel by the City Council to review and advise on the following issues: (as requested by Mayor McManus)

Mayor McManus stated the City Attorney had a tremendous amount of conflict of interest; it was inappropriate for the City Attorney to recommend removal of the agenda item.

City Attorney Morris repeated his objection to Item No. 18. He stated he had an ongoing obligation to protect the City Council from possible Open Meeting Law

¹ Although it is not relevant, it is noteworthy that former Mayor Rod Woodbury, former City Councilman Duncan McCoy, and Municipal Judge Victor Miller (whose contract also was subject to review by special counsel if the agenda item passed) made statements during public comment in lockstep with Morris’s comments that the agenda items and backup materials were not “clear and complete.”

² Only four of the five voting members of the Council were present at the meeting.

violations. He said he could not determine if a conflict had occurred without more specificity on the agenda title. He added that matters of public concern require a heightened obligation of specificity. He said the item completely lacked specificity. He said there were many problems with the agenda title and it was not due to a lack of trying to obtain the specificity by City staff. He noted the Council always had the ability to meet with him and others to help with formulating an appropriate agenda title. He stated there were not just implications with the Open Meeting Law, but with the Charter and State law as well.

Mayor McManus stated the City Attorney should have recused himself from making any comments regarding this agenda item. He noted the item may have an impact on the employment contract of all of the municipal officers, including the City Attorney. He reiterated there was a conflict of interest for the City Attorney. He stated it was one of the reasons he was moving forward with the item and not taking the recommendation of the City Attorney. He reviewed the agenda item and said it was clear and complete. He said with respect to Item C, the intent was to allow members of the City Council to express ideas regarding the hiring of the special counsel. He said he would withdraw discussion of Item C as he had received feedback from others. He said he has spoken to the Attorney General's office and although he did not receive an official opinion, he received some opinions which substantiated his agenda item was clear and complete.

A. Nevada Open Meeting Law standards and requirements

Mayor McManus stated additional advice was needed regarding issues with the Nevada Open Meeting Law. He said there has been conflicting and inconsistent information provided. He said the Council has the ability and the need to have an attorney where they can ask questions. He said the wording in the Charter was clear the City Council has the ability to hire legal counsel if in the best interest of the City.

B. Employment contract of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge

Mayor McManus stated he was the only member of Council involved in the hiring of the City Attorney and City Manager. He said he had voted against both contracts. He said other members of Council should have the opportunity to have someone with a legal background to provide information to them and formulate a decision what should be done with the contracts, if anything. He said it was a conflict of interest for the City Attorney to provide comments or recommendations on his own contract. He said the discussion does not include the process for employing a special counsel. He said he has conducted his own research and believes it meets all requirements of the Open Meeting Law.

Council Member Bridges expressed she only voted to keep the matter on the agenda in order to share her thoughts. She said the item made her very uncomfortable. She said she does not feel any need to employ a special counsel; she had received training and many materials regarding the Open Meeting Law when she was elected. She stated she understood the employment contracts. She said she has had no reason not to trust staff and the information provided to the

City Council. She said she had met with the City Attorney personally to ask questions and address concerns.

Council Member Folda commented that retention of a special council is appropriate since the City Attorney cannot review his own contract. She expressed support of the item.

Mayor McManus remarked the item in the City Attorney's contract regarding working outside of the City was a clear violation of the City Charter, and the issue needs to be addressed.

C. Other issues as determined by a majority of City Council

Motion: To direct Staff to employ a special counsel to advise the City Council on Open Meeting Law issues and the employment contracts of the City Manager, City Clerk, City Attorney, and Municipal Judge. The employment is in the interest of the City and special counsel will be employed by and report directly to City Council as provided for in the City Charter.

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus and Council Member Tracy Folda (2)

NAY: Council Member James Howard Adams and Council Member Claudia Bridges (2)

Absent: Council Member Warren Harhay (1)

The motion failed.

Exhibit 15. Some observations about Item 18:

- Morris *again* (fifth opportunity) did not recuse himself and disclose his significant pecuniary interest in the agenda item that, if passed, would have resulted in an independent attorney reviewing his employment contract and advising the Council. Instead, Morris merely repeated his objection to the agenda item.
- McManus removed Item 2(c) from discussion.
- The motion failed.

Exhibit 15.

15. On December 18, 2019, Citizen Peggy Leavitt ("Leavitt") filed a complaint with the AG Office alleging an Open Meeting Law violation. Exhibit 3. Leavitt asserted McManus "blatantly and willfully violated the OML" and Folda "also violated the OML (possibly willfully)." Exhibit 3. The legal basis for Leavitt's accusation, in lockstep with Morris's objections, is that the agenda items were not "clear and complete" pursuant to NRS 241.020(2)(d)(1). Exhibit 3.

16. On January 9, 2020, Morris sent an email to McManus, Folda, and the other City Council Members. Exhibit 16. The gist of the email was Morris advising that he intended to submit a response to the OML Complaint on behalf of the City. Exhibit 16. Morris *again* (sixth opportunity) did *not* recuse himself or disclose his significant pecuniary interest in the agenda item that formed the basis for the OML Complaint. Exhibit 16. Morris also did not recuse himself or find independent counsel to respond to the OML Complaint on the basis that a reasonable attorney would have recognized that his conduct was central to the investigation of the OML Complaint. Exhibit 16. Instead, trapped by the record his misconduct created, Morris unilaterally resolved to orchestrate the City's official response. Exhibit 16.

II.

RESPONSE TO THE OML COMPLAINT

A. Legal Standards.

All public bodies exist to aid in the conduct of the people's business. NRS 241.010(1). The law requires the actions of public bodies be taken openly and that their deliberations be conducted openly. NRS 241.010(1). To that end, all meetings of public bodies must be open and public. NRS 241.020(1).

Written notice of all meetings of public bodies must be given at least three working days before the meeting. NRS 241.020(2). The notice must include an agenda consisting of "clear and complete statements of the topics scheduled to be considered during the meeting." NRS 241.020(2)(d)(1). The agenda also must describe each item on which action may be taken by placing the term "for possible action" next to the appropriate item. NRS 241.020(2)(d)(2).

Upon any request, a public body shall provide, at no charge, at least one copy of any supporting material pertaining to an agenda item that was provided to the members of the public body. NRS 241.020(6)(c). Moreover, the governing body of a city whose population is 45,000 or more shall post the supporting material to its website at the same time the material is provided to the public body. NRS 241.020(8).

A public body is obligated to observe "strict compliance" with agenda topics. *Sandoval v. Bd. of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 905 (2003). A public body is in violation of the Open Meeting Law when its discussions exceed the scope of an agenda topic. *Id.* at 155, 67 P.3d at 906. A public body also may violate the Open Meeting Law when an agenda topic is too broad to alert the public of what will be discussed and what action might be taken. *Id.*

The degree of specificity that an agenda item must have to meet the "clear and complete" requirement is governed by a reasonableness standard. 79-8 *Op. Att'y Gen.* 31, 31 (1979) *cf Northwest Area Residents Ass'n v. City of Las Vegas*, 432 P.3d 191 (2018) (unpublished). The degree of specificity required will vary from item to item depending on all the relevant circumstances. *Id.*

The following cases and opinions have addressed compliance with the "clear and complete" requirement, each under its unique facts and circumstances:

- An agenda item stating “Legislative Update – this item may be discussed at Monday’s Caucus Meeting and/or Tuesday’s Board meeting and may involve discussion by [WCBC] and direction to staff on various bill draft requests (BDRs)” where the list of specific bills were referenced as accessible on the public body’s website satisfied the “clear and complete” standard. *Schmidt v. Washoe County*, 123 Nev. 128, 138, 159 P.3d 1099, 1106 (2007) (overruled on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)).
- The below agenda item plus supporting material was sufficiently “clear and complete” under the Open Meeting Law:

Review and Approve the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co., dba Incline Sanitation Co. and authorize Chair and Secretary to execute the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co., dba Incline Sanitation Co. based on a review by State and General Counsel (Requesting Staff Member: General Manager Steve Pinkerton; presented by Director of Public Works Joe Pomroy) – pages 79-139

O.A.G. File No. 13897-207 (Sept. 30, 2016).

- The below agenda item was “clear and complete” on its face:

DCSD Self-Insured Health Insurance Plan – Proposed Revisions to Plan for Calendar Year 2016

(Discussion and For Possible Action)

The Board will be provided with information about the Health Insurance plan and discuss any recommendations made by the Health Insurance Advisory Committee for changes to the plan coverage in the upcoming year.

RECOMMENDATION: It is recommended that the Board consider all recommendations and make any changes necessary to assure that that the plan and its benefits are sound moving into the next plan year.

O.A.G. File No. 13897-215 (Jan. 27, 2017).

- The below agenda item was “clear and complete” on its face:

Review, discuss and possibly approve Golf Play Pass rate structure for the Incline Village Golf Courses 2018 golf season (Requesting Staff member: Director of Golf Michael McCloskey)

O.A.G. File No. 13897-294 (Oct. 2, 2018).

When an agenda item is “pulled” during a meeting and that agenda topic is not discussed, there can be no violation of the Open Meeting Law with respect to that agenda item. *Schmidt* at 135, 159 P.3d at 1104.

The Attorney General is required to investigate and prosecute any violation of NRS Chapter 241 alleged in a timely complaint filed by a person who resides within the jurisdiction of the public body. NRS 241.039(1)-(3). No criminal penalty or administrative fine may be imposed upon a member of the public body if the member violated the law as a result of legal advice provided by an attorney employed or retained by the public body. NRS 241.040(6). Also, a member of a public body who attends a meeting of that public body at which a violation of this chapter occurs is not the accomplice of any other member so attending. NRS 241.040(3).

B. Items 2(a) and 2(b) Were “Clear and Complete.”

The following items on the agenda for the October 22, 2019 meeting are alleged to be in violation of the Open Meeting Law on the basis that the items are not sufficiently “clear and complete”:

For Possible Action: Discussion and possible staff directive regarding retention of a special counsel by the City Council to review and advise on the following issues: (as requested by Mayor McManus)

- A. Nevada Open Meeting Law standards and requirements
- B. Employment contract of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge
- C. Other issues as determined by a majority of City Council.

Exhibit 12, Item 18. The agenda also provided:

Supporting material is on file and available for public inspection at the City Clerk’s Office, 401 California Avenue, Boulder City, Nevada 89005 and the Boulder City website at www.bcnv.org, as per NRS 241. To request supporting material, please contact the City Clerk Lorene Krumm at (702) 293-9208 or lkrumm@bcnv.org.

Exhibit 12.

The OML opinions furnished by Mr. Detmer to McManus in advance of the October 22, 2019 meeting articulated the following principles: (1) NRS 241.020(2)(d)(1) does not require an agenda item to include speculation as to the full impact that an action might have (O.A.G. File

No. 13897-204); (2) a public body is permitted to deliberate and take action upon an agenda item that is clear and complete on its face (O.A.G. File No. 13897-215); and (3) an agenda item for possible action that recites more than one topic for discussion and approval is not confusing (O.A.G. File No. 13987-191). Additionally, O.A.G. File 13897-294 rejected a complaint that alleged the review and discussion of “Punch Card policy” as a subtopic of the “Golf Play Pass rate structure” should have had its own agenda item. The AGO determined it was reasonable to assume that the public would see the agenda language and understand that the entirety of the rate structure would be up for approval. O.A.G. File 13897-294.

Agenda Items 2(a) and 2(b) advanced by McManus are clear and complete on their face. Using a reasonableness standard, a member of the public would understand that McManus proposed to discuss and possibly approve the retention of a special counsel to review and advise on Nevada Open Meeting Law standards and requirements (as to Item 2(a)) and the employment contracts of the City Manager, City Clerk, City Attorney and Municipal Judge. Exhibit 12. The memoranda and other supporting materials relating to Items 2(a) and 2(b) explained in great detail McManus’s reasons for the discussion and possible vote to retain special counsel. Exhibits 5-11. These materials further informed the public on the agenda topics. These agenda items were clear and complete in accordance with NRS 241.020(2)(d)(1), *Sandoval v. Bd. Of Regents*, and the AGO’s OML Opinions. The complaint therefore lacks merit as to Items 2(a) and 2(b).

C. Item 2(c) Was Removed from Discussion.

McManus explicitly removed from Item 2(c)³ from discussion. Exhibit 15. Nothing pertinent to that topic was discussed and nothing pertinent to that topic was voted upon. It is impossible for there to be an Open Meeting Law violation on an item that is pulled from the agenda and not discussed. *See Schmidt v. Washoe County, supra*. The complaint therefore lacks merit as to Item 2(c).

D. Morris’s Failure to Recuse Himself from the Matter Kept McManus and Folda Within the “Safe Harbor” Described in NRS 241.040(6).

The gravest concern in this entire matter involves the City Attorney’s failure to disclose and recuse himself from proffering legal advice on an agenda item that affected his personal, significant pecuniary interests, namely his employment contract. Morris’s ethics violation(s) is(are) magnified by virtue of the fact that Morris had no less than six opportunities to disclose and recuse himself in accordance with NRS 281A.420. He failed to do so at each turn. Each opportunity is noted above. The *seventh* opportunity will come and go if Morris proceeds to respond to this OML Complaint on behalf of the City.

Morris’s ethics violations created a confusing situation for the public. Morris failed to disclose his personal pecuniary interest in having a special counsel review and advise the Council on his employment contract. He exacerbated his failure by advising that the agenda item

³ Had McManus received legal advice from an attorney unmotivated by his personal economic interests, he likely would have been told that other possible reasons for hiring special counsel not listed on the agenda would have been a perfectly acceptable agenda topic if it had been “for discussion only.” There is no record of Morris offering any such alternatives to McManus. The only options Morris ever offered was to remove the items from the agenda.

violated open meeting law. Morris effectively misled the public to believe he was using his official capacity to act in the best interests of the City rather than in furtherance of his personal best interests. Had Morris disclosed the conflict and recused himself from the matter as the law required him to do, a disinterested attorney would have correctly advised McManus and the Council on the agenda items and this OML Complaint likely would never have occurred.

Morris's violations also harmed McManus personally, both in terms of exposure to criminal and civil penalties under NRS 241.040 and having to hire the undersigned counsel using his own financial resources. NRS 241.040(6) affords "safe harbor" to any member of a public body if the member violated the Open Meeting Law as a result of legal advice provided by employed or retained by the public body. McManus and Folda never had the luxury of untainted, improper legal advice from an attorney retained by the City. They instead received legal advice from a self-interested, conflicted public officer that should never have been proffered. If Morris had disclosed the conflict and recused himself from giving advice on the legitimacy of the agenda items under the Open Meeting Law, the odds are that independent counsel would have properly advised and protected McManus. The agenda items would have proceeded, and McManus and the other Council members would have had the "safe harbor" protection. Instead, McManus and Folda have had to hire the undersigned as their personal counsel in this matter.

These facts present a matter of first impression with respect to the "safe harbor" of NRS 241.040(6). This is the premise:

- (1) An attorney for a public body has a significant personal pecuniary interest in whether an agenda item proceeds to hearing or not;
- (2) Without disclosing the conflict or recusing himself, the attorney for the public body advises members of the public body multiple times, in private and in public, that the agenda item should be removed based on alleged Open Meeting Law violations, and the removal of the item is in furtherance of that attorney's significant personal, pecuniary interest;
- (3) Some members of the public body disregard the advice of the attorney for the public body, place the items on the agenda, and then discuss and vote upon the agenda items in a public meeting;
- (4) A member of the public files an Open Meeting Law complaint consistent with the attorney's tainted advice, which advice was proffered at the public meeting without disclosure or recusal;
- (5) The attorney for the public body responds to the Open Meeting Law Complaint on behalf of the City, acknowledges an Open Meeting Law violation, and further asserts the members of the public body disregarded his legal advice (or merely leaves the record to stand without acknowledging his own misconduct) and are thus outside the safe harbor of NRS 241.040(6).

If the foregoing premise is true, the AG Office should not find that the members of the public body departed the safe harbor afforded by NRS 241.040(6). It would be inherently unfair to expose the members to personal liability because the attorney for the public body violated NRS 281A.420. It also is unfair to require the individual members of the public body to use their own financial resources to retain private counsel to make this point.

E. Conclusion.

Based on the foregoing, the AG Office should make the following determinations:

1. Items 2(a) and 2(b) were sufficiently “clear and complete;”
2. Item 2(c) was removed the agenda and not discussed or acted upon;
3. McManus and Folda are entitled to safe harbor protection under NRS 241.040(6) because Morris violated NRS 281A.420 on numerous occasions;
4. No violation of the Open Meeting Law occurred; and
5. the AG Office will close its file *after* it refers this matter to the Ethics Commission for proceedings consistent with the AG Office’s determinations, or after it assists the Ethics Commission in its own investigation, whichever the case may be.

III.

COMPLAINT TO THE ETHICS COMMISSION

The following legal standards apply to this complaint:

- An attorney for a public body is a “public officer” under NRS 281A.160. NRS 281A.160; *see also* Nevada Commission on Ethics, Request for Opinion No. 13-77A, Abstract Opinion (July 31, 2014).
- A public officer shall not act upon a matter in which the public officer has a significant pecuniary interest without disclosing information concerning the significant pecuniary interest in a manner that is sufficient to inform the public of the potential effect of the action or abstention upon the public officer’s significant pecuniary interest. NRS 281A.420(1)(b). Such disclosure must be made at the time the matter is considered. NRS 281A.420(1).
- The Commission only gives weight and deference to public officers who have properly disclosed their significant pecuniary interests in the manner provided in NRS 281A.420(1). NRS 281A.420(4)(b).
- Abstention is *mandatory* in clear cases where the independence of judgment of a reasonable person in the public officer’s situation would be materially affected by the significant pecuniary interest. NRS 281A.420(4)(b) (emphasis supplied).

- The Commission may render an opinion that interprets and applies those standards to a given set of facts and circumstances regarding the propriety of the conduct of a public officer if an ethics complaint is filed by any person. NRS 281A.710(1)(b).

The following premise is supported by this letter and the attached exhibits:

(1) Morris, a public officer serving as the City Attorney for Boulder City, Nevada, had a significant personal pecuniary interest in whether a proposed agenda item seeking to appoint special counsel to review his employment contract with the City was on or off the agenda.

(2) Without disclosing the conflict or recusing himself, Morris advised McManus privately on multiple occasions, verbally and in writing, and advised the City Council at large in a public meeting that the agenda item concerning the appointment of special counsel should be removed based on his opinion that it violated the Open Meeting Law.

(3) McManus disregarded Morris's advice, kept the item on the agenda, and the Council thereafter discussed and voted upon the agenda item in a public meeting;

(4) A member of the public filed an Open Meeting Law complaint consistent with Morris's tainted advice proffered at the City Council meeting without disclosure of the conflict or recusal thereupon;

(5) Morris proceeded to respond to the Open Meeting Law Complaint on behalf of the City and acknowledged the private and public opinions he offered concerning the agenda items.

If the foregoing premise is determined to be true after a complete investigation, then the Nevada Commission on Ethics should make a determination that Morris violated NRS 281A.420(1) and NRS 281A.420(3) on multiple occasions and take any further appropriate action.

Very truly yours,



Noah G. Allison

NGA/njm
Enclosures

cc: Clients

Exhibit “1”

DECLARATION OF KIERNAN McMANUS

I, Kiernan McManus, declare under pains and penalties of perjury:

1. I am the duly elected Mayor of Boulder City, Nevada.
 2. A true and correct copy of the Letter from Justin R. Taruc Dated December 23, 2019 with Enclosures is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 3.
 3. A true and correct copy of the Boulder City Charter is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 4.
 4. A true and correct copy of the Memorandum Dated October 3, 2019 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 5.
 5. A true and correct copy of the October 7, 2019 Email from Morris to McManus is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 6.
 6. A true and correct copy of the October 7, 2019 Email from McManus to Morris is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 7.
 7. A true and correct copy of the Memorandum Dated October 14, 2019 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 8.
 8. A true and correct copy of the October 15, 2019 Email from Morris to McManus is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 9.
 9. A true and correct copy of the Memorandum Dated October 15, 2019 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 10.
 10. A true and correct copy of the October 15, 2019 Email Between McManus and Krumm is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 11.
 11. A true and correct copy of the Agenda for October 22, 2019 City Council Meeting is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 12.
 12. A true and correct copy of the October 17, 2019 Email from Detmer to McManus is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 13.
 13. A true and correct copy of the Memorandum Dated October 18, 2019 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 14.
 14. A true and correct copy of the City Council Regular Meeting Minutes October 22, 2019 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 15.
 15. A true and correct copy of the January 9, 2020 Email from Morris is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 16.
-

16. A true and correct copy of the Nevada Commission on Ethics, Ethics Complaint, January 23, 2020 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 17. I authorized Mr. Allison as my counsel to sign the Complaint on my behalf.

17. Steven Morris is the City Attorney of Boulder City, Nevada pursuant to a contract with the City.

18. The City Council Regular Meeting Minutes October 22, 2019 accurately reflect and summarize the meeting with respect to Agenda Item 18.

Dated this 23rd of January 2020


KIERNAN McMANUS

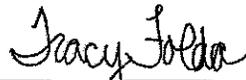
Exhibit “2”

DECLARATION OF TRACY FOLDA

I, Tracy Folda, declare under pains and penalties of perjury:

1. I am a member of the City Council of Boulder City, Nevada.
2. A true and correct copy of the Letter from Justin R. Taruc Dated December 23, 2019 with Enclosures is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 3.
3. A true and correct copy of the Agenda for October 22, 2019 City Council Meeting is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 12.
4. A true and correct copy of the City Council Regular Meeting Minutes October 22, 2019 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 15.
5. A true and correct copy of the January 9, 2020 Email from Morris is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 16.
6. A true and correct copy of the Nevada Commission on Ethics, Ethics Complaint, January 23, 2020 is attached to the Letter from Noah G. Allison dated January 23, 2020 as Exhibit 17. I authorized Mr. Allison as my counsel to sign the Complaint on my behalf.
7. The City Council Regular Meeting Minutes October 22, 2019 accurately reflect and summarize the meeting with respect to Agenda Item 18.

Dated this 23rd of January 2020



TRACY FOLDA

EXHIBIT “3”

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

December 23, 2019

Via U.S. Mail

City Council of Boulder City
401 California Ave.
Boulder City, NV 89005

Re: City Council of Boulder City – Open Meeting Law Complaint,
OAG File No. 13897-354

Dear Council:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML), NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the City Council of Boulder City (“CCBC”).

The OAG requests that the CCBC, through its legal counsel, prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the response.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before January 23, 2020.

Should you have any questions, please contact Debra Turman via email at dturman@ag.nv.gov.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Justin R. Taruc
JUSTIN R. TARUC
Deputy Attorney General

JRT:dkt
Encl.

**STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL**

100 N. CARSON ST., CARSON CITY, NV 89701 – TEL# 775-684-1100 – FAX# 775-684-1108
555 E. WASHINGTON AVE., STE 3900, LAS VEGAS, NV 89101 – TEL# 702-486-3420 – FAX# 702-486-3768



COMPLAINT FORM

The information you provide on this form may be used to help us investigate violations of state laws. Please be sure to complete all required fields. The length of this process can vary depending on the circumstances and information you provide. The Attorney General's office may contact you if additional information is needed. Supplemental materials can be attached to Section 6 of this complaint form, and if additional supplemental materials are acquired after submitting this form, please email them to AGCOMPLAINT@ag.nv.gov with COMPLAINT in the subject line.

*****ONLY COMPLAINTS THAT ARE SIGNED WILL BE PROCESSED*****

HAVE YOU PREVIOUSLY FILED A COMPLAINT WITH OUR OFFICE? YES NO
If so, what are the approximate dates of previously filed complaint(s)?

SECTION 1: COMPLAINANT INFORMATION

LAST NAME: Leavitt		FIRST NAME: Peggy		M.I.
ORGANIZATION:				
ADDRESS: 1543 Bryce Canyon Street		CITY: Boulder City	STATE: NV	ZIP: 89005
PHONE/MOBILE: (702) 241-9193		EMAIL: peggyleavitt4bcc@gmail.com		
AGE GROUP:	<input type="checkbox"/> UNDER 18	<input type="checkbox"/> 18 to 59	<input type="checkbox"/> 60 AND OVER	
PRIMARY LANGUAGE: English				

SECTION 2: TYPE OF COMPLAINT

<input type="checkbox"/> GENERAL INVESTIGATIONS	<input type="checkbox"/> MISSING CHILDREN	<input type="checkbox"/> TICKET SALES
<input type="checkbox"/> HIGH TECH CRIME	<input type="checkbox"/> MORTGAGE FRAUD	<input type="checkbox"/> WORKERS COMP FRAUD
<input type="checkbox"/> INSURANCE FRAUD	<input checked="" type="checkbox"/> OPEN MEETING LAW	<input type="checkbox"/> OTHER
<input type="checkbox"/> MEDICAID FRAUD	<input type="checkbox"/> PUBLIC INTEGRITY	

SECTION 3: MY COMPLAINT IS AGAINST

<input checked="" type="checkbox"/> INDIVIDUAL <input type="checkbox"/> BUSINESS <input checked="" type="checkbox"/> AGENCY NAME OF INDIVIDUAL/BUSINESS/AGENCY: City Council of Boulder City / Council members McManus, Folda, Bridges			
ADDRESS: 401 California Avenue		CITY: Boulder City	STATE: NV ZIP: 89005
TELEPHONE NUMBER:		EMAIL:	
WEBSITE: BCNV.org			
DATE ALLEGED VIOLATION OCCURRED: October 22, 2019			
WAS A CONTRACT SIGNED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
HAVE YOU CONTACTED ANOTHER AGENCY FOR ASSISTANCE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF SO, WHICH AGENCY?			
HAVE YOU HIRED AN ATTORNEY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF SO, PROVIDE ATTORNEY'S CONTACT INFORMATION:			
IS COURT ACTION PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
DID YOU MAKE ANY PAYMENTS TO THE INDIVIDUAL OR BUSINESS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
HOW MUCH WERE YOU ASKED TO PAY?		HOW MUCH DID YOU ACTUALLY PAY?	
DATE OF PAYMENT:		PAYMENT METHOD:	

Continued to Section 4 to describe complaint.

Facebook: [/NVAttorneyGeneral](#) Twitter: [@NevadaAG](#) YouTube: [NevadaAG](#)

SECTION 4: DESCRIBE YOUR COMPLAINT:

➤ (to add attachments, see Section 5)

I believe that the City Council of Boulder City (Council) violated the Open Meeting Law (OML) at the October 22, 2019 Council meeting. I believe that in their capacity as members of the Council, Mayor Kiernan McManus blatantly and willfully violated the OML, Councilwoman Tracy Folda also violated the OML (possibly willfully), and Councilwoman Claudia Bridges violated the OML as well, in connection with that meeting.

AGENDA ITEM #18

Their violations pertain to item #18 of the attached October 22, 2019 meeting agenda (Agenda). (See Attachment 1) Agenda item #18 reads as follows:

18. For possible action: Discussion and possible staff directive regarding retention of a special counsel by the City City Council to review and advise on the following issues: (as requested by Mayor McManus)

- A) Nevada Open Meeting Law standards and requirements
- B) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge
- C) Other issues as determined by a majority of City Council

CONTINUED ON ATTACHED SHEETS

EMAIL AGCOMPLAINT@ag.ny.gov to submit any additional information

SECTION 5: EVIDENCE

List and attach photocopies of any relevant documents, agreements, correspondence or receipts that support your complaint. Copy both sides of any canceled checks that pertain to this complaint. *See attachments 1-10*

SECTION 6: WITNESSES

List any other known witnesses or victims. Please provide names, addresses, phone numbers, email address and website information.

see attachment 11

SECTION 7: SIGN AND DATE THIS FORM

(The Attorney General's Office will not process any unsigned, incomplete or illegible complaint forms)

I understand that the Attorney General is **not my private attorney**, but rather represents the public by enforcing laws prohibiting fraudulent, deceptive or unfair business practices. I understand that the Attorney General does not represent private citizens seeking refunds or other legal remedies. I am filing this complaint to notify the Attorney General's Office of the activities of a particular business or individual. I understand that the information contained in this complaint may be used to establish violations of Nevada law in both private and public enforcement actions. In order to resolve your complaint, we may send a copy of this form to the person or firm about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the individual or business identified in this complaint. I also understand that the Attorney General may need to refer my complaint to a more appropriate agency.

I certify under penalty of perjury that the information provided on this form is true and correct to the best of my knowledge.

******ONLY COMPLAINTS THAT ARE SIGNED WILL BE PROCESSED******

SIGNATURE: *Margaret R. (Peggy) Leavitt*
PRINTNAME: *MARGARET R. (PEGGY) LEAVITT*
DATE: *12/18/19*

Facebook: [/NVAttorneyGeneral](#) Twitter: [@NevadaAG](#) YouTube: [NevadaAG](#)

➤ SECTION 8: OPTIONAL INFORMATION

GENDER: MALE FEMALE

ETHNICITY:

<input type="checkbox"/> WHITE/CAUCASIAN	<input type="checkbox"/> BLACK/AFRICAN AMERICAN	<input type="checkbox"/> HISPANIC/LATINO
<input type="checkbox"/> NATIVE AMERICAN/ALASKAN	<input type="checkbox"/> ASIAN/PACIFIC ISLANDER	<input type="checkbox"/> OTHER:

HOW DID YOU HEAR ABOUT OUR COMPLAINT FORM (CHOOSE ONE):

<input type="checkbox"/> CALLED/VISITED OUR CARSON CITY OFFICE	<input type="checkbox"/> SEARCH ENGINE
<input type="checkbox"/> CALLED/VISITED OUR LAS VEGAS OFFICE	<input type="checkbox"/> AG SOCIAL MEDIA SITE
<input type="checkbox"/> CALLED/VISITED OUR RENO OFFICE	<input type="checkbox"/> ATTENDED AN AG PRESENTATION
<input type="checkbox"/> NEVADA OFFICIAL/ELECTED OFFICIAL	<input type="checkbox"/> OTHER

MARK ALL THAT APPLY

<input type="checkbox"/> INCOME BELOW POVERTY LEVEL	<input type="checkbox"/> MILITARY SERVICEMEMBER
<input type="checkbox"/> DISASTER VICTIM	<input type="checkbox"/> IMMEDIATE FAMILY OF SERVICEMEMBER/VETERAN
<input type="checkbox"/> PERSON WITH DISABILITY	<input type="checkbox"/> VETERAN
<input type="checkbox"/> MEDICAID RECIPIENT	<input type="checkbox"/> OTHER:

Facebook: [/NVAttorneyGeneral](#) Twitter: [@NevadaAG](#) YouTube: [NevadaAG](#)

EMAIL AGCOMPLAINT@ag.nv.gov to submit any additional information

ADDITIONAL COMMENTS:

What are you hoping the Attorney General's office can do for you?

EMAIL AGCOMPLAINT@ag.ny.gov to submit any additional information

I believe that the City Council of Boulder City (Council) violated the Open Meeting Law (OML) at the October 22, 2019 Council meeting. I believe that in their capacity as members of the Council, Mayor Kiernan McManus blatantly and willfully violated the OML, Councilwoman Tracy Folda also violated the OML (possibly wilfully), and Councilwoman Claudia Bridges violated the OML as well, in connection with that meeting.

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 - A) Nevada Open Meeting Law standards and requirements
 - B) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge
 - C) Other issues as determined by a majority of City Council

MAYOR'S McMANUS'S REQUEST FOR AGENDA ITEM #18, CITY ATTORNEY'S REPEATED WARNINGS ABOUT RESULTING OML VIOLATIONS, & MAYOR'S REFUSAL TO LISTEN

Item #18 is the second of three items that Mayor McManus asked to be included on that Agenda. (See **Agenda items #17, #18, and #19 on Attachment 1**)

The Mayor made his initial request by email and attached Memorandum to City Clerk Lorene Krumm on October 3, 2019. (See **Attachment 2**) At the end of the Memorandum, he indicated that he would provide additional information for the three requested agenda items the following week.

City Attorney Steven Morris then responded to Mayor McManus's request by e-mail dated October 7, 2019, which the City Clerk and City Manager were copied on. (See **Attachment 3, pp. 4-5**) The City Attorney's response focused solely on the second of McManus's three requested agenda items, the one that eventually became item #18 of the Agenda. Specifically, the City Attorney warned Mayor McManus that subparts b) and c) of that requested agenda item would violate the OML because they weren't "clear and complete" to the degree of specificity required by NRS 241.020(2)(d)(1) and the Nevada Supreme Court case of *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). (See **Attachment 3, p. 5**) With respect to subpart b) regarding the retention of special counsel to review and advise on the employment contracts of the four major Council-appointed officers, the City Attorney questioned the clarity and specificity of the proposed agenda item "as to what the Council will deliberate and potentially take action on," then reminded the Mayor that "the purpose of the agenda is to give the public notice of what its government is

doing, has done, or may do. The use of general or vague language is to be avoided, and more detail would be required to put the public on notice of the desire or intent of employing assistant or special counsel to review and advise the Council on the employment contracts of the appointed city officers.” (See Attachment 3, p. 5) With respect to subpart c) regarding retention of special counsel to review and advise on unspecified “Other issues as determined by a majority of City Council,” City Attorney Morris flatly told the Mayor that that non-specific phrase “does not comply with the statute’s requirement that every agenda item contain a clear and complete statement of topics to be considered” and referred Mr. McManus to two supporting AG opinions. (See Attachment 3, p. 5) Finally, with respect to both of the vague subparts b) and c), the City Attorney stated: “Agendas should be written in a manner that gives notice to the public of the items anticipated to be brought up at the meeting and agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body.” (See Attachment 3, p. 5) The City Attorney also offered his assistance and that of City Clerk Lorene Krumm and City Manager Al Noyola to help Mr. McManus give the proposed agenda items the “clarity” required by the OML, stating that “We look forward to assisting you in preparing agenda items that comply with Nevada law.” (See Attachment 3, p. 5)

Mayor McManus replied by email to the City Attorney the same day (October 7, 2019), stating “I believe it would have been best to wait for the additional information I will be providing before engaging in an analysis of my request However, I would be happy to discuss the issues this afternoon in general terms.” (See Attachment 3, p. 3)

And so city staff waited for the additional information promised by Mayor McManus.

One week later, Mayor McManus sent an October 14, 2019 Memorandum to City Clerk Lorene Krumm regarding the proposed agenda item to retain special counsel. (See Attachment 4) In it, he quoted language from Section 15 of the City Charter regarding the position of City Attorney, including language in Section 15, Paragraph 4 authorizing the Council to employ assistant or special counsel if certain conditions are met. (See Attachment 4, pp. 1-2) He then went on to indicate a few reasons why he believes retention of special counsel is needed and his opinion that “[o]ther City Council members may also discuss additional reasons for the need to employ a special counsel.” (See Attachment 4, pp. 2-3) However, McManus concluded by stating: “The agenda item is specific for the purpose of whether a special counsel should be employed in the interests of the City. The discussion of the reasons for doing so or for not doing so are to be discussed by members of the City Council if they choose to do so.” (See Attachment 4, p. 3)

The next day, October 15, 2019, City Attorney Morris then e-mailed a response to Mayor McManus which the City Manager and City Clerk were copied on, stating:

In my role as legal advisor of the Council I am desirous to assist you and the Council in avoiding conflict, reducing risk and complying with the law. However, that requires collaborative communication with staff and clear and complete communication to the public on the policy items and issues the Council intends to deliberate and potentially take action

on. Unfortunately, no additional information or specificity was provided to your proposed agenda items since your briefing on October 7, 2019, and I have been informed that no additional information or specificity regarding your proposed agenda Item 2 has been provided to the City Manager or City Clerk. The City Attorney's office is always available to meet with you, or any Council Member, at your convenience to assist in crafting agenda titles that comply with the OML. I know the same holds true of the City Manager's and the City Clerk's office. Without any additional information or specificity that is required by the Open Meeting Law ("OML"), it remains my opinion that your proposed agenda items are not "clear and complete" and therefore violate the OML. (See Attachment 3, p. 2)

Then, after discussing the Council's recent OML violations, including a very recent alleged violation involving Council's deliberations and ultimate action that exceeded the scope of an agenda item which the City Attorney was already in process of trying to help Council correct (see Attachment 3, p. 2), Attorney Morris concluded that it remained his opinion that the proposed agenda items violated the OML. He again offered the assistance of his office and the offices of the City Manager and City Clerk "to assist you in crafting agenda items that comply with the OML" and "to assist the Council in avoiding potential violations." (See Attachment 3, p. 3) Mr. Morris finished by again reminding the Mayor that "The intent of the OML is to be completely transparent in what issues the Council will be deliberating and taking action on and the only unknown should be the vote of the respective Council members on those issues." (See Attachment 3, p. 3)

That same day (October 15), less than an hour later, Mayor McManus sent a responsive email to Attorney Morris on which the City Manager and City Clerk were copied. (See Attachment 3, p. 1) Attached to that email was a Memorandum addressed to Mr. Morris. (See Attachment 5). In the Memorandum, McManus said he had reviewed Attorney Morris's October 7, 2019 email, as well as the *Sandoval* case and other information provided at that time by Attorney Morris. He even quoted portions of the *Sandoval* case in support of his position that his proposed agenda items, including Agenda item #18, were clear enough. (See Attachment 5, pp. 2-3)

Later that afternoon, City Clerk Krumm then asked Mr. McManus for confirmation that he still wished to proceed with Agenda item #18 after having received and reviewed the City Attorney's opinion on the supplemental material McManus had provided the day before (see Attachment 3, p. 1), to which Mayor McManus promptly responded: "You are correct. I wish to proceed with item no. 18 with the supplemental material and all materials that City Staff may have contributed on the item" (see Attachment 3, p. 1).

PUBLICATION OF AGENDA AND BACK-UP MATERIALS

Consequently, against the advice of the City Attorney, item #18 was included in the Agenda for the October 22, 2019 Council meeting as directed by Mayor McManus without the addition of any further details, clarification, or specificity. (See Attachment 1) The back-up materials that were part of the published Agenda packet included Attachments 1-5, including all of the documented correspondence between Mayor McManus and City Attorney Morris in which Attorney Morris had

at least twice informed the Mayor in writing that his proposed agenda sub-items that eventually became #18 B) and C) were not clear and specific enough for the public to understand what was going to be discussed and have a basis to determine whether they should participate in the meeting. The City Attorney also verbally gave the same warnings to Mr. McManus. Further, the City Attorney had repeatedly offered his assistance in helping the Mayor draft more specific agenda items so they would not violate the OML.

MAYOR McMANUS'S POST-PUBLICATION MEMO ACKNOWLEDGING AG OPINIONS

On October 18, 2019, the Friday before the scheduled Council meeting, which was after the Agenda and back-up materials had already been released to the public, Mayor McManus sent a follow-up email and Memorandum to Attorney Morris. **(See Attachment 6)** In that Memorandum, McManus indicated that he had spoken to an unidentified Deputy Attorney General regarding Agenda item #18 and the possibility of employing special counsel. **(See Memorandum included as part of Attachment 6)** Mr. McManus also indicated that while the deputy was unable to provide him with a specific legal opinion on the issues raised concerning proposed Agenda item #18, he did provide McManus with three previously issued Attorney General opinions that discuss the “clear and complete” agenda standard. **(See Memorandum included as part of Attachment 6)** Those three AG opinions were OMLO 13897-215 (Jan. 27, 2017), OMLO 13897-204 (Sep. 30, 2016), and OMLO 13897-191 (June 2, 2016) **(See Attachment 7)**, all of which McManus claimed he had read and said they confirmed that his requested Agenda item #18 meets the standard of being clear and complete. **(See Memorandum included as part of Attachment 6)** Therefore, he indicated to Attorney Morris that “I plan to proceed with the agenda item I have requested for the purposes stated in the agenda item” and further indicated his intent to request that his memoranda “be provided to the City Council and the public prior to the meeting on October 22, 2019.” **(See Memorandum included as part of Attachment 6)**

INITIAL PUBLIC COMMENT AT THE OCTOBER 22, 2019 COUNCIL MEETING

At the October 22, 2019 Council meeting during the first public comment period, several residents spoke regarding Agenda item #18. **(See Attachment 8 meeting minutes and Attachment 9 thumb drive containing video recording of the meeting)** These individuals voiced various concerns regarding Agenda item #18, many of which centered around the fact that the agenda item was not sufficiently clear to inform them and other citizens about what the Council intended to discuss or ultimately deliberate and take action on. They also voiced concerns that because the agenda item was so vague, they were confused about its purposes and consequently unable to provide meaningful comment without additional information.

For instance, after seriously questioning the need for and cost of engaging special counsel, Duncan McCoy **(Attachment 9 thumb drive, approx. time codes 16:07-19:30)** wondered whether sub-item #18 B) was about possible termination of the city officials, warned Council to investigate the potential impact of the exit clauses in the officials’ contracts if that was in fact Council’s intent, and cautioned about improper termination of employment. He also stated that sub-item #18 C)

regarding “Other items . . .” was too vague to be useful in any public agency’s agenda and didn’t describe what the Council’s conversation will or may cover.

Ross Johnson (**Attachment 9 thumb drive, approx. time codes 19:34-21:15**) agreed with Mr. McCoy’s recommendation that Council members should review prior AG opinions on point and stated that he doubted that the AG would render an opinion on Agenda item #18 over the phone.

Richard Stewart (**Attachment 9 thumb drive, approx. time codes 24:51-27:55**) also questioned the high cost of engaging special counsel and stated that the #18 agenda items are very vague. Mr. Stewart elaborated that the agenda items lack detail and don’t really tell the public what Council is going to have special counsel look into. He stated his opinion that the agenda items need to be narrowed down so that the public knows exactly what the Council is planning in these regards.

Rod Woodbury (**Attachment 9 thumb drive, approx. time codes 28:00-33:25**) began by expressing his opinion that if the hiring of special counsel is really necessary, then it’s a critical issue because it involves the employment of the four most prominent members of city management—the City Manager, City Clerk, City Attorney, and Municipal Judge. However, he noted his confusion about the contents of the #18 agenda sub-items. With respect to the #18 C) “Other issues” sub-item, he complained that he didn’t and couldn’t know what that means, so he couldn’t really give any comment on it. And as for #18 B) concerning review of the top four city officials’ contracts, he noted that Mayor McManus’s memos in the included back-up material lacked reasons for wanting to do this, whereas the Mayor’s memos in connection with the proposed repeal of utility rate increases in item #17 were contrastingly chalk-full of reasons. Mr. Woodbury felt he could only speculate concerning the possible reasons why these existing contracts might need to be reviewed by special counsel, such as possibly to terminate them, to force a re-negotiation of terms, to arrive at a better form to use in negotiations with future employees, or any number of possible reasons. He also questioned whether this was really a legitimate attempt to get outside help or instead an attempt to circumvent the City Attorney and get around the OML. He hoped the Council would enlighten everyone before the evening was over.

Fred Voltz (**Attachment 9 thumb drive, approx. time codes 33:30-38:00**) thought an objective review of the top city officials’ contracts was in order to determine what the taxpayers are contractually obligated to pay them in comparison to amounts paid for the same positions in other similarly sized cities. He compared the compensation packages of Boulder City’s City Clerk and City Attorney to those in other jurisdictions like Mesquite, Carson City, and Fernley, then expressed his opinion that by comparison, Boulder City is paying the individuals currently occupying those positions far too much.

Victor Miller, Boulder City’s Council-appointed municipal judge and long-time Boulder City resident (**Attachment 9 thumb drive, approx. time codes 38:06-39:20**), also spoke. As Muni court judge, he could be directly affected by the outcome of Agenda item #18 B) because he has an employment contract with the City. Judge Miller stated that after reviewing Agenda item #18 and all of the back-up materials, which he found to be unclear, all he could assume was that there might

be some question about his contract. But he had no way to determine what that was and therefore couldn't prepare to give meaningful comment at the Council meeting. So, instead he expressed his open-door policy and invited Council members or anyone else that may have questions about his contract to talk with him at any time. He further pledged to make himself available and to help in any other way that he could.

Some individuals also gave opening public comment on Agenda item #13, an item to take corrective action on an OML violation that allegedly occurred at the October 8, 2019 Council meeting when Counsel arguably engaged in discussions or deliberations beyond the scope of an otherwise "clear and complete" agenda item. (See, for example, Neil Siniakin's comments on Attachment 9 thumb drive at approx. time codes 10:38-16:00, Richard Stewart's comments at approx. time codes 25:51-27:55, and Judy Hoskins' comments at approx. time codes 41:56-43:15)

COUNCIL'S APPROVAL OF AGENDA, INCLUDING SUB-ITEMS #18 B) & C)

After receiving initial public comment, Council proceeded to its approval of the regular Agenda, including Agenda item #18. (Attachment 9 thumb drive, approx. time codes 43:25-44:40) At this time, City Attorney Morris again recommended removal of Agenda item #18, warning Mayor McManus and the other Council members not to proceed with the item as agendized in order to avoid OML violations. The Mayor had his own contrary opinion. After requesting input from other Council members and receiving none, he affirmed that he was the one who had requested item #18, stated that he had already spelled out his reasons for doing so, commented that he would go into further detail later in the meeting during discussion on that item, and declared that he therefore would not be removing the item from the Agenda. Mayor McManus then moved to approve the Agenda as published, which was seconded by Councilwoman Tracy Folda. The motion passed 3-1, with McManus, Folda, and Councilwoman Claudia Bridges voting to approve and Councilman James Adams voting against approval.

COUNCIL'S DELIBERATIONS AND VOTE ON AGENDA SUB-ITEMS #18 B) & C)

Although the Council voted 3-1 to include item #18 on the Agenda, that item failed to pass later in the meeting due to a 2-2 tie vote after further discussion and deliberation. Before that vote occurred, however, Mayor McManus finally agreed that he would remove sub-item #18 C) from the Agenda. Nevertheless, he wrongfully attempted to remove it alone without a vote of the other Council members. Not only was that act an OML violation itself, but neither it nor the subsequent tie vote nullifies the OML violations that had already occurred in connection with inclusion of the unclear and incomplete Agenda sub-items #18 B) and C) in the first place.

NEWSPAPER REPORT OF POTENTIAL OML VIOLATIONS

The day after the October 22, 2019 Council meeting, the Boulder City Review reported these potential OML violations in an article written by reporter Celia Shortt Goodyear. (See Attachment

10) Not only is the public protected by the OML and Nevada’s “clear and complete” agenda requirement, but so is the press’s ability to report governmental actions to the public. (See *Sandoval*, 119 Nev. at 154, 67 P.3d at 905 (noting that the Legislature enacted the “clear and complete” requirement in part because “incomplete and poorly written agendas . . . interfere with the press’ ability to report the actions of government”) (internal quotation marks and citations omitted).

NRS 241.020’s CLEAR AND COMPLETE AGENDA REQUIREMENT, THE SANDOVAL CASE, AND RELEVANT ATTORNEY GENERAL OPINIONS

NRS 241.020(2)(d)(1) mandates that agendas must include a “clear and complete statement of the topics scheduled to be considered during the meeting.” The *Sandoval* case extensively analyzed this requirement (see *Sandoval*, 119 Nev. at 153-56, 67 P.3d at 905-907), and past Attorney General opinions have discussed it as well (see OMLO 13897-215 (Jan. 27, 2017), pp. 3-4, OMLO 13897-204 (Sep. 30, 2016), pp. 2-3, and OMLO 13897-191 (June 2, 2016), pp. 2-4). In *Sandoval*, the Nevada Supreme Court interpreted the “clear and complete” requirement to mean that it must provide the public with “clear notice of the topics to be discussed at public meetings, so that the public can attend a meeting when an issue of interest will be discussed.” (See *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906. See also OMLO 13897-215 (Jan. 27, 2017), p. 3, included in Attachment 7.) *Sandoval* also noted that “a higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public,” a guiding principle that these same Attorney General opinions have repeatedly quoted and focused on. (See *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906. See also OMLO 13897-215 (Jan. 27, 2017), p. 3, OMLO 13897-204 (Sep. 30, 2016), p. 3, and OMLO 13897-191 (June 2, 2016), p. 3, all of which are included in Attachment 7 and quote the foregoing language from *Sandoval*).

In *Sandoval*, the lower court acknowledged Nevada’s “clear and complete” agenda standard but relied on out-of-state authority to conclude that any discussion in a public meeting that is “germane” to an agenda topic does not violate Nevada’s OML. (See *Sandoval*, 119 Nev. at 150, 152-53, 67 P.3d at 903, 904-05.) Accordingly, the lower court determined that no violations of the OML had occurred at the committee and board meetings in question because the respective discussions at those meetings, although not specifically listed in the agenda items, were at least “germane” to the listed topics.

On appeal, the main issue in dispute was whether the lower court properly applied the “germane standard” or whether Nevada’s OML requires a more stringent standard. (See *Sandoval*, 119 Nev. at 153, 67 P.3d at 905.) The Nevada Supreme Court examined the legislative history of the Nevada’s “clear and complete” requirement, finding that the State Legislature enacted it at least in part because “incomplete and poorly written agendas deprive citizens of their right to take part in government” and also “to ensure that the public is on notice regarding what will be discussed at public meetings.” (See *Sandoval*, 119 Nev. at 154, 67 P.3d at 905.) The Supreme Court concluded that the “germane standard” is more lenient than the Legislature intended and therefore rejected it, noting that not requiring strict compliance with agenda requirements would render the “clear and

Lorene Krumm

From: Kiernan McManus
Sent: Thursday, October 3, 2019 5:54 PM
To: Lorene Krumm
Subject: Request for Agenda Items for the 10-22-19 Council Meeting
Attachments: RequestForAgendaItems_10-22-19.doc

Lorene,
Please see the attached memo requesting items to be added for the 10/22/19 City Council meeting.

Best regards,
Kiernan



MEMORANDUM

To: Lorene Krumm, City Clerk

From: Kiernan McManus, Mayor

Date: October 3, 2019

Re: Request for 10/22/2019 Council Meeting Agenda Items

Please include the following items for the City Council Meeting Agenda scheduled for October 22, 2019.

- 1) For possible action and direction to City Staff: Review of Utility Rate increases scheduled to begin in January 2020 for possible adjustment or repeal.

- 2) For possible action and direction to City Staff: Retention of a special counsel by the City Council to review and advise on the following issues.
 - a) Nevada Open Meeting Law standards and requirements.
 - b) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney and Municipal Judge.
 - c) Other issues as determined by a majority of City Council.

- 3) For possible action and direction to City Staff and the Parks Recreation Committee regarding the recommendation from the Committee to construct new soccer fields.

I will provide additional information for these items next week. Please let me know if there are any questions or concerns.

ATTACHMENT 3

Lorene Krumm

From: Kiernan McManus
Sent: Tuesday, October 15, 2019 3:33 PM
To: Lorene Krumm
Cc: Al Noyola; Lauren Oliver; Steven Morris
Subject: RE: Agenda Items

Lorene,

You are correct. I wish to proceed with item no. 18 with the supplemental material and all materials that City Staff may have contributed on the item.

Best regards,
Kiernan

From: Lorene Krumm
Sent: Tuesday, October 15, 2019 2:05 PM
To: Kiernan McManus
Cc: Al Noyola; Lauren Oliver; Steven Morris
Subject: RE: Agenda Items

For confirmation, you wish to proceed with Item No. 18 after receiving the City Attorney's opinion on your supplemental material? You wish to attach your supplemental material along with the material provided to you by the City Attorney as backup to this item?

Lorene Krumm, MMC, CPO
City Clerk
City of Boulder City
401 California Avenue
Boulder City NV 89005
(702) 293-9208

From: Kiernan McManus <KMcManus@bcnv.org>
Sent: Tuesday, October 15, 2019 12:06 PM
To: Steven Morris <SMorris@bcnv.org>
Cc: Lorene Krumm <LKrumm@bcnv.org>; Al Noyola <ANoyola@bcnv.org>; Lauren Oliver <LOliver@bcnv.org>
Subject: RE: Agenda Items

Mr. Morris,

Thank you for your response. Please review the attached memorandum. If you would like to discuss further please let me know.

Best regards,
Kiernan

Susan L. Lacey, DCPEA
January 27, 2017
Page 4

CONCLUSION

The Board was permitted to deliberate and take action on recommendations from the District's Chief Financial Officer when making revisions to the District's Self-Insured Health Insurance Plan under agenda item no. 12. Agenda item no. 12 presented a clear and complete statement of the topic to be considered and the potential action to be taken, in compliance with NRS 241.020(2)(d)(1) and (2). No violation of NRS 241.020 occurred; the OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 

Brett Kahdt
Chief Deputy Attorney General
Telephone: (775) 684-1201

WBK/klr

cc: Michael E. Malloy, Esq.



ADAM PAUL LAXALT
Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

WESLEY K. DUNCAN
First Assistant Attorney General
NICHOLAS A. TRUTANICH
First Assistant Attorney General

September 30, 2016

via First Class Mail

Linda S. Newman
PO Box 5685
Incline Village, NV 89450

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-204
Incline Village General Improvement District Board of Trustees

Dear Ms. Newman:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID) Board of Trustees (Board) at a public meeting held on July 7, 2016. The complaint alleges that agenda item No. G(3) for the meeting was not clear and complete in compliance with NRS 241.020(2)(d)(1) and (2).

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. In response to the complaint, the OAG reviewed the public notice, agenda and supporting material, written minutes, and audio recording of the meeting, together with a response to the complaint from Jason Guinasso, Esq., General Counsel for the Board.

FACTUAL BACKGROUND

The Board is created pursuant to NRS Chapter 318, and is a "public body" as defined in NRS 241.015(4), subject to the OML. Agenda item No. G(3) for the Board's July 7, 2016, meeting read as follows:

3. Review and Approve the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co.,

dba Incline Sanitation Co. and authorize Chair and Secretary to execute the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co., dba Incline Sanitation Co. based on a review by Staff and General Counsel (Requesting Staff Member: General Manager Steve Pinkerton; presented by Director of Public Works Joe Pomroy) - pages 79-139.

The agenda item provided a specific reference to pages 79–139 of the supporting materials, which were made available to the public at the time they were provided to the Board trustees. The supporting material was extensive and included a complete copy of the Franchise Agreement, details on the solicitation and negotiation of the Franchise Agreement, the projected financial impact of the Franchise Agreement, and a PowerPoint presentation explaining the Franchise Agreement.

During public comment at the beginning and again at the end of the meeting, Aaron Katz offered detailed comment in opposition to the Franchise Agreement. Kevin Lyons offered comment at the beginning and again at the end of the meeting apparently directed at Agenda item No. G(3), that took exception to whether the agenda item was clear and complete.

After presentations by staff and extensive discussion, Board Trustee Hammerel moved “to approve the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co., dba Incline Sanitation Co.” Trustee Horan seconded the motion. The motion passed with Trustees Hammerel, Dent, Horan and Wong voting in favor; Trustee Callicrate was not present to vote.

DISCUSSION AND LEGAL ANALYSIS

NRS 241.020(2)(d)(1) requires that an agenda must include a “clear and complete statement of the topics scheduled to be considered during the meeting” while NRS 241.020(2)(d)(2) requires that an agenda must include a “list describing the items on which action may be taken and clearly denoting that action may be taken on those items.” *See also Sandoval v. Board of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 906 (2003) (“discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic”).

Agenda item No. G(3) is clear and complete on its face. The agenda item was identified “for possible action” and accurately reflects the action taken: approval of the Franchise Agreement itself and, consequently, authorization to the Board Chair

Linda S. Newman
September 30, 2016
Page 3

and Secretary to execute the Franchise Agreement. The substance of the public comments concerning agenda item No. G(3) further demonstrate that the public understood that the potential action to be taken was approval of a new agreement with Reno Disposal Co., dba Incline Sanitation Co., to provide solid waste and recyclables collection services to the residents of Incline Village.

The complaint further asserts that agenda item No. G(3) was not "clear and complete" in that it did not specify the impact that the approval of the Franchise Agreement would have upon the residents of Incline Village. "A higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public." *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906 (citations omitted). However, agenda item No. G(3) complied with the statutory mandate to provide the public clear notice that the Board would deliberate and potentially take action on approval of the Franchise Agreement. NRS 241.020(2)(d)(1) does not require that the agenda item include speculation as to the full impact that such a decision might have, nor would such a requirement be reasonable. "A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results." *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (citations omitted). Moreover, the extensive supporting material agenda item No. G(3) provided transparency on the potential impact of the action taken.

CONCLUSION

The OAG finds that no violation of the OML occurred, and the OAG will be closing its file this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 

BRETT KANDT
Chief Deputy Attorney General
Boards and Open Government
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1201

WBK/klr
cc: Jason Guinasso, Esq.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
First Assistant Attorney General

June 2, 2016

Via First Class Mail

James T. Slade
589 Leealan Drive
Gardnerville, NV 89460

Re: Open Meeting Law Complaint, A.G. File No. 13897-191
Douglas County Board of Commissioners

Dear Mr. Slade:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Nevada Open Meeting Law (OML) by the Douglas County Board of Commissioners (Board) at a public meeting held on March 3, 2016. The complaint alleges three violations arising from one agenda item, No. 9.¹ First, the complaint alleges that the agenda item "was not described with clear and complete detail."

¹ 9. For possible action. Discussion on (A) Adoption of **Resolution 2016R-015** (Development Application DA 14-079), an amendment to the Master Plan to change the land use designation from Agricultural to Receiving Area and to amend the text of the Ruhenstroth Community Plan to create a "transition area" that would allow a diversity of residential density and non-residential development, and (B) Introduction of **Ordinance 2016-1458** (Development Application DA 15-046), for Specific Plan Approval to develop 130 acres for the following uses: Village Center: Mixed Use Commercial, Lodging, Live-work Studio Lofts: 78,000 sq. ft. Community Green: Barn, Orchard, Community Garden, Greenhouse: 10,000 sq. ft. Active Living: 42 units, 4 dwelling units per acre Cottage Homes: 136 units, 3.2 dwelling units per acre Ranch Homes: 60 units, 2.1 dwelling units per acre Working Ranch and Farm: 35 acres The site is proposed to have two access points off Pinenuf Road. The subject 130 acre property is located at 859 Highway 395 and is known as The Corley Ranch. The property is zoned A-19 and is located in the Ruhenstroth Community Plan. The property owner is Jon Corley, Corley Ranches, LLC, and the applicant is Mark Neuffer, Alta Consulting, LTD. APN: 1220-14-000-007 (**1st Reading**) (Hope Sullivan) 1 hour

Second, the complaint alleges that the agenda item "was drafted to create confusion." Finally, the complaint alleges that "the restrictions on public comment were unreasonable."

The OAG has statutory enforcement powers under the OML and the authority to investigate allegations of a violation of the OML. NRS 241.039; NRS 2141.040. In response to the complaint, the OAG reviewed the public notice, agenda and supporting material for the meeting, the written minutes, audio and video recordings of the meeting, together with a response to the complaint from the Douglas County District Attorney's Office.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4), subject to the OML.

On August 11, 2015, the Douglas County Planning Commission (DCPC) considered proposed amendments to the Master Plan map and text concerning the Ruhenstroth Community Plan, for the proposed development of 130 acres within the Corley Ranch (Specific Plan). The proposed Master Plan amendments and the Specific Plan were interdependent; the Specific Plan could only be implemented if the Master Plan map and text were re-designated to accept the Specific Plan. The DCPC recommended denial of the proposed amendments to the Master Plan and of the Specific Plan.²

On March 3, 2016, the Board considered the DCPC's recommendations to deny the proposed Master Plan amendments and the Specific Plan under agenda item No. 9. County staff represented to the Board that the amendments to the Master Plan had to be approved before the Specific Plan could be approved. The Board then heard eighty minutes of public comment from thirty-one people before taking any action on agenda item No. 9. None of the public comment indicated confusion as to the potential action to be taken. To the contrary, the public's comments were directed to the relative merits of the Corley Ranch development proposal. After public comment, the Board voted to approve the Master Plan amendments, and thereafter by separate vote approved the Specific Plan.³

DISCUSSION AND ANALYSIS

The first alleged violation is that agenda item No. 9 "was not described with clear and complete detail." NRS 241.020(2)(d)(1) requires that an agenda must include a "clear and complete statement of the topics scheduled to be considered during the

² The DCPC considered the proposed Master Plan amendments in two agenda items.

³ The complaint alleges that there were three action items under agenda item No. 9: 1) approval of the proposed amendments to the Master Plan map; 2) approval of the proposed amendments to the Master Plan text; and 3) approval of the Specific Plan. However, the Board approved the proposed amendments to the Master Plan map and text in a single vote.

meeting" while NRS 241.020(2)(d)(2) requires that an agenda must include a "list describing the items on which action may be taken and clearly denoting that action may be taken on those items." *See also Sandoval v. Board of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 906 (2003) ("discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic"). Agenda item No. 9 is clear and complete on its face. The two matters set forth in the agenda item were identified "for possible action" and labeled in bold as "(A)" and "(B)." Agenda item No. 9 clearly stated that "(A)" was adoption of Resolution 2016R-015 for the amendments to the Master Plan and "(B)" was the introduction of Ordinance 2016-1458 for approval of the Specific Plan for the development of Corley Ranch property. The substance of the public comments under agenda item No. 9 further demonstrate that the public fully comprehended the potential action to be taken: approval of the proposed development of 130 acres within the Corley Ranch.

The complaint further asserts that agenda item No. 9 was not "clear and complete" in that it did not specify that the Board must make certain findings for the Master Plan amendments in conformance with Douglas County Code (DCC) 20.608.040. "A higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public." *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906 (citations omitted). However, agenda item No. 9 complied with the statutory mandate to provide the public clear notice that the Board would deliberate and potentially take action on the proposed amendments to the Master Plan and the Specific Plan. The agenda item accurately reflects that this action procedurally required two votes by the Board: approval of the amendments to the Master Plan, followed by approval of the Specific Plan. Furthermore, the OML does not grant the OAG oversight of the decision-making process of the Board under DCC 20.608.040.

The second alleged violation is that that agenda item No. 9 "was drafted to create confusion." This allegation is an adjunct to the first alleged violation. However, there is no factual basis to support this allegation. A plain reading of the agenda item establishes that the Board would deliberate and potentially take action on the proposed amendments to the Master Plan and the Specific Plan. The record evidences no confusion on the part of the public in attendance.

The third alleged violation is that "the restrictions on public comment were unreasonable." NRS 241.020(2)(d)(3) sets forth minimum requirements for public comment but permits a public body to take additional public comment.⁴ "When the

⁴ NRS 241.020(2)(d)(3) requires that public comment be taken:

- (I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or
- (II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *Nevada Power Co. v. Pub. Util. Comm'n*, 122 Nev. 821, 837, 138 P.3d 487, 495 (2006) (citations omitted). In this instance, the Board took public comment at the beginning and before adjournment of the meeting in conformance with NRS 241.020(2)(d)(3)(I), in addition to taking public comment before taking any action on agenda item No. 9. The Board strictly complied with the statutory requirements for public comment.

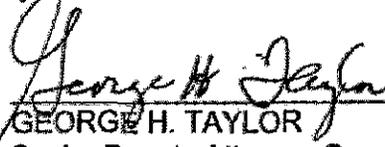
CONCLUSION

The Board was permitted to deliberate and take action on the proposed amendments to the Master Plan and the Specific Plan under agenda item No. 9. Agenda item No. 9 presented a clear and complete statement of the topics to be considered and the potential action to be taken, in compliance with NRS 241.020(2)(d)(1) and (2). The Board took public comment in compliance with the requirements of NRS 241.020(2)(d)(3). No violation of NRS 241.020 occurred; the OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:



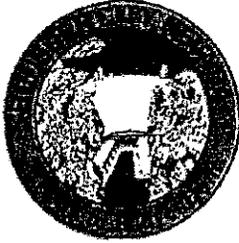
GEORGE H. TAYLOR
Senior Deputy Attorney General
Bureau of Government Affairs
Boards and Open Government

GHT/klr

cc: Cynthia Gregory, Douglas County Deputy District Attorney
Doug N. Johnson, Chairman, Douglas County Board of Commissioners
Larry Werner, County Manager, Douglas County
Hope Sullivan, Planning Manager, Douglas County

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

ATTACHMENT 8



**CITY COUNCIL
REGULAR MEETING MINUTES**

**COUNCIL CHAMBER, 401 CALIFORNIA AVENUE
BOULDER CITY, NEVADA 89005**

Tuesday, October 22, 2019 – 7:00 PM

CALL TO ORDER

The regular meeting of the Boulder City Council, County of Clark, State of Nevada, was called to order at 7:00 P.M., Tuesday, October 22, 2019, in the Council Chamber, City Hall, by Mayor McManus in due compliance with law, the Charter, and the Council's Rules of Procedure.

Council members present: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

Absent: Council Member Warren Harhay (1)

Also present: Acting City Manager Dennis Porter, City Attorney Steve Morris, City Clerk Lorene Krumm, Deputy City Clerk Tami McKay, Administrative Officer Bryce Boldt, Community Development Director Michael Mays, Interim Fire Chief Steve Walton, Parks and Recreation Director Roger Hall, Police Chief Tim Shea, Public Works Director Keegan Littrell

INVOCATION AND PLEDGE OF ALLEGIANCE

The Invocation was offered by Kurt Hedland of Bethany Baptist Church; followed by the Pledge of Allegiance.

PUBLIC COMMENT/ANNOUNCEMENTS

Mayor McManus welcomed the fourth-grade students in attendance to earn their Nevada Citizen Award.

Acting City Manager Dennis Porter offered happy birthday wishes to Council Member Adams.

**ADMINISTRATION OF THE OATH OF OFFICE TO FIREFIGHTERS RYAN BODILY,
JASON DARDANO, AND CARL FORD**

Tami McKay, Deputy City Clerk, administered the Oath of Office to the firefighters.

PUBLIC COMMENT

Neal Siniakin expressed his support for the hiring of a special counsel. He stated the appraisal for Tract 350 was only valid for one year and was completed last February. He stated he did not think there was an Open Meeting Law violation at the October 8, 2019 meeting. He stated City Attorney Morris should offer an apology for suggesting the Open Meeting Law had been violated.

Duncan McCoy recommended postponing Item No. 17 until the contracted rate study was completed. He suggested the City not waste taxpayer money to hire a special attorney. He suggested members of Council read the numerous opinions available regarding the Open Meeting Law found on the Nevada Attorney General's website. He said with respect to hiring outside counsel to assist with the contracts of the appointed officials, the contracts were written in plain English and they should be capable of understanding what the contracts say. He suggested the Council read the exit clauses. He said Item No. 18C was too vague to be useful and did not describe what the conversation may cover. He encouraged the Council to become familiar with how the Nevada Attorney General had ruled on similar matters.

Ross Johnson stated the City had hired a rate consultant and had formed an advisory committee regarding utility rates. He questioned if the Council was interested in receiving information and recommendations from the consultant or committee prior to taking action on the utility rates. He stated any additional information the Council needed with respect to the Open Meeting Law could be obtained from the Attorney General rather than a private attorney.

Ken Green stated he had indicated that information staff had provided regarding Item 8B during the September Planning Commission meeting were inaccurate. He noted he had submitted an appeal on the item, but would like to withdraw his appeal since he had been misinformed on a number of issues.

Richard Stuart stated he believed the Open Meeting Law had been violated at the October 8, 2019 Council meeting concerning the Request for Proposal for the land near Bristlecone. He stated he lived in the area and was not aware action would be taken regarding the street; he had received information from the media. He stated Bristlecone Drive was very busy and needed a median. He said the current members of Council campaigned regarding the misuse of City funds, and now they were the ones who were wasting by suggesting to hire another attorney. He stated the description of Item No. 18 were too vague. He said the Council should be more open about what exactly it was proposing.

Rod Woodbury thanked the Council for their service to the community. He expressed support for several agenda items including the Railroad Museum project, and the Copper Mountain 5 project among others. He stated Item No. 18 was confusing and asked that the reason for suggesting hiring a special counsel be explained. He said he was also confused about the item relating to the employment contracts as the backup material did not provide any reasoning; therefore, the public was left to speculate. He echoed the sentiments expressed by previous speakers stating the agenda title was too vague. He said the Attorney General had the enforcement and investigative authority for the Nevada Open Meeting Law, and there were resources and training available. He stated hiring

special counsel for matters related to the Open Meeting Law was an attempt to circumvent the City Attorney and the Open Meeting Law. He said with respect to the item related to the utility rate increases, the Council should consider capital projects, aging utility infrastructure, and the debt on the raw water line.

Fred Voltz asked his comments be added verbatim. (See attached)

Victor Miller remarked that he had reviewed Agenda Item No. 18B and its backup materials and felt that it was unclear. He said he had no ability to prepare for the meeting as the agenda title was not clear or concise. He said he was always available and open to discuss any matters related to his contract with any of the members of the City Council.

David McMillan stated that he bought Gingerwood Mobile Home Park approximately 18 months ago. He noted he was proposing to add seven more spaces to house seniors 55 years and older. He noted there is a waiting list of seniors that would like to live there as it was a nice place to live that was affordable.

Judy Hoskins addressed Item No. 13 and indicated the agenda should have stated "possible" or "alleged" violation. She noted that the City Attorney, City Manager, and City Clerk have training on the Open Meeting Law and should advise Council when a violation occurs.

No further comments were offered, and the public comment period was closed.

FOR POSSIBLE ACTION: APPROVAL OF REGULAR AGENDA

City Attorney Steve Morris recommended the removal of Item No. 18.

Mayor McManus explained that he had requested Item No. 18 and would not be removing it from the Agenda.

Motion: Approve the Regular Agenda.

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member Claudia Bridges, Council Member Tracy Folda (3)

NAY: Council Member James Howard Adams (1)

Absent: Council Member Warren Harhay (1)

The motion was approved.

FOR POSSIBLE ACTION: APPROVAL OF CONSENT AGENDA

Motion: Move Item No. 4 to the Regular Agenda and approve the Consent Agenda, as amended

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

CONSENT AGENDA

1. For possible action: Approval of minutes
 - A. September 24, 2019 Regular City Council Meeting
 - B. October 8, 2019 Regular City Council Meeting
2. For possible action: Resolution No. 7009, a resolution of the City Council of Boulder City, Nevada approving a Special Event Promotion Grant in the amount of \$2,500 for the Nevada Preservation Foundation's Water Over the Dam: The Catalytic Boulder City Event

A staff report had been submitted by Economic Development Coordinator Raffi Festekjian and included in the October 22, 2019, City Council Agenda Packet.

3. For possible action: Resolution No. 7010, a resolution of the City Council of Boulder City, Nevada approving agreement No. 19-1847 between the City of Boulder City and the Regional Transportation (RTC) to provide project funding for the Neighborhood Rehabilitation Program 2019-20, B.C. Project No. 20-1094-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget

A staff report had been submitted by Public Works Director Keegan Littrell and included in the October 22, 2019, City Council Agenda Packet.

4. For possible action: Resolution No. 7011, a resolution of the City Council of Boulder City, approving Agreement No. 19-1848 between the City of Boulder City and the Regional Transportation Commission of Southern Nevada to provide project funding for the Railroad Museum Road, B.C. Project No. 20-1095-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget

This Item had been moved to the Regular Agenda.

5. For possible action: Matters relating to Copper Mountain Solar 5 project:
- A. Resolution No. 7012, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1849, a non-exclusive easement for Access between the City of Boulder City, Cooper Mountain Solar 5, LLC and Copper Mountain Solar 1, LLC
 - B. Resolution No. 7013, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1850, a non-exclusive easement for Access between the City of Boulder City and Cooper Mountain Solar 5, LLC
 - C. Resolution No. 7014, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1851, a non-exclusive easement for Fencing along Copper Mountain Solar 1 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 1 LLC
 - D. Resolution No. 7015, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1852, a non-exclusive easement for Fencing along the Copper Mountain Solar 2 Boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 2, LLC
 - E. Resolution No. 7016, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1853, a non-exclusive easement for Fencing along the Copper Mountain Solar 4 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 4, LLC
 - F. Resolution No. 7017, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1854, a non-exclusive easement for Collection of Solar Energy between the City of Boulder City and Copper Mountain Solar 5
 - G. Resolution No. 7018, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1855, a non-exclusive easement for access to existing operations/maintenance facility at the Copper Mountain Solar 3 project between the City of Boulder City, Copper Mountain Solar 5, LLC, and Copper Mountain Solar 3, LLC
 - H. Resolution No. 7019, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1856, a non-exclusive easement for construction of a gen-tie line, communications improvements, paved access road and a water line upon the Copper Mountain Solar 2 project site between the City of Boulder City, Copper Mountain Solar 5, LLC, and Copper Mountain Solar 2, LLC
 - I. Resolution No. 7020, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1857, a non-exclusive easement for construction of electrical collection facilities, communications improvements, temporary water line, improved driveway and related improvements between the City of Boulder City and Copper Mountain Solar 5, LLC

A staff report had been submitted by Finance Director Pelletier and included in the October 22, 2019, City Council Agenda Packet.

6. For possible action: Matters pertaining to Copper Mountain Solar 5 and NV Energy
 - A. Resolution No. 7021, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1858, a non-exclusive easement for construction of electrical transmission and communication facilities upon the Copper Mountain Solar 4 site between the City of Boulder City, Nevada Power Company, and Copper Mountain Solar 4, LLC
 - B. Resolution No. 7022, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1859, a non-exclusive easement for utility facilities between the City of Boulder City and Nevada Power Company
 - C. Resolution No. 7023, a resolution of the City Council of Boulder City amending the easement Agreement dated August 30, 2006 between Boulder City, Nevada Solar One LLC, and Nevada Solar One project site

A staff report had been submitted by Finance Director Pelletier and included in the October 22, 2019, City Council Agenda Packet.

REGULAR AGENDA

4. For possible action: Resolution No. 7011, a resolution of the City Council of Boulder City, approving Agreement No. 19-1848 between the City of Boulder City and the Regional Transportation Commission of Southern Nevada to provide project funding for the Railroad Museum Road, B.C. Project No. 20-1095-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget

A staff report had been submitted by Public Works Director Keegan Littrell and included in the October 22, 2019, City Council Agenda Packet.

Council Member Folda stated she had heard concerns the Railroad Museum would not receive funding for two more years and was \$20M short for construction costs. She questioned if the City would be building a road to nowhere and asked how it could impact surrounding businesses.

Public Works Director Littrell responded the plan was only conceptual. He explained some of the connector roads and business accesses stating the roadway would parallel Linear Park. He stated the project would take approximately nine months to design.

In response to a question by Council Member Folda, Public Works Director Littrell explained there was no design work involved in conceptual plans. He said \$500K was an estimate. He said if the agreement was approved, the City would hire a consultant.

In response to a question by Council Member Bridges, Public Works Director Littrell confirmed the road was the only part of the future project the RTC will fund.

Council Member Adams expressed some concern with a possible road to nowhere especially if it was not creating additional access to the businesses in the area.

Public Works Director Littrell noted that the road would offer some additional street side parking and alternate routes for drivers.

Mayor McManus commented it may be in the best interest of Boulder City to show the State the City was planning on completing the project by moving forward with the required infrastructure.

Motion: Approve Resolution No. 7011

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

7. Introduction of Bill No. 1864, an Ordinance of the City Council of Boulder City authorizing the issuance by the City of its "Boulder City, Nevada, Utility Revenue Refunding Bonds, Series 2019_ in the maximum principal amount of \$26,000,000 for the purpose of refinancing the existing Utility Revenue Refunding Bonds, Series 2006 obligation, providing the form, terms and conditions thereof

A staff report had been submitted by Finance Director Diane Pelletier and included in the October 22, 2019, City Council Agenda Packet.

Motion: Introduce Bill No. 1864 and waive the reading except for the title, as follows:

Moved by: Council member Bridges

"Bill 1864, an Ordinance of the City Council of Boulder City authorizing the issuance by the City of its "Boulder City, Nevada, Utility Revenue Refunding Bonds, Series 2019" in the maximum principal amount of \$26,000,000 for the purpose of refinancing the existing Utility Revenue Refunding Bonds, Series 2006 obligation, providing the form, terms and conditions thereof."

Bill No. 1864 will be considered at the November 12, 2019 regarding City Council meeting.

8. For possible action: Matters pertaining to the proposed expansion of a mobile home park:

A staff report had been submitted by City Planner Danielewicz and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Michael Mays provided an overview of the staff report.

In response to a question by Council Member Adams, Community Development Director Mays stated the Planning Commission granted variances on the lot size, requirement for putting up a wall on the southern end, and landscaping on the eastern perimeter.

Council member Adams complimented Community Development Director Mays for reaching out to Mr. Green and providing clarification on the issue.

Mayor McManus noted Mr. Green had expressed concern for potential flooding in the area. He explained extensive work had been done in the area surrounding Gingerwood, so it was likely it would be removed from the flood plan.

A. Public hearing on a proposed rezoning

Mayor McManus announced it was the time and place scheduled to conduct the public hearing on the proposed Zoning Map amendment.

Neal Siniakin commented the Planning Commission regularly approved variances, and the criteria had not been met for a variance for the fence. He recommended that more training be given to the Planning Commissioners regarding when variances should be permitted.

Council Member Folda stated she had concerns since the land abuts City land. She noted she has other concerns stating the proposed Zoning Map amendment required two findings. She said she did not think it promoted the health and safety morals of the general welfare of the City which was one of the required findings in order to rezone.

Council Member Bridges pointed out the desire for affordable housing in the City, and said it was an opportunity to create seven new homes in the community.

Council Member Adams stated providing the ability for the additional housing did conform to the required findings.

- B. Consideration of Bill No. 1862, an Ordinance of the City of Boulder City, Nevada to amend the Zoning Map to rezone approximately 0.48 acres within Gingerwood Mobile Home Park at 1300 Gingerwood Street from S, Study to MP, Mobile Home Park to match the remainder of the park (AM-19-342)

Motion: Approve Bill No. 1862 with the following findings:

1. The proposed amendment is in general conformance with the adopted Comprehensive Plan for the City; and
2. That the proposed amendment promotes the health, safety, morals or the general welfare of the City

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges (3)

NAY: Council Member Tracy Folda (1)

Absent: Council Member Warren Harhay (1)

The motion was approved.

Bill No. 1862 will become known as Ordinance No. 1638 effective October 14, 2019.

C. Resolution No. 7024, a resolution of the City Council of Boulder City, Nevada awarding 7 residential allotments for Construction Year 2019-20 for Gingerwood mobile Home Park at 1300 Gingerwood Street (AFDA-19-192)

Motion: Approve Resolution No. 7024

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges (3)

NAY: Council Member Tracy Folda (1)

Absent: Council Member Warren Harhay (1)

The motion was approved.

9. For possible action: Matters pertaining to modifying the Master Plan and Map to increase conservation area and update the plan for related and other categories

A staff report had been submitted by City Planner Danielewicz and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report.

In response to a question by Council Member Bridges, Community Development Director Mays stated the lot size for LDR2 (low density residential) was reduced from 7,000 to 5,000 s.f. to recognize the City has a zoning district that allows for low density residential at 5,000 s.f.

In response to a question by Council member Adams, Community Development Director Mays stated in older residential neighborhoods, although zoned R1-7, the lots are 5,000 s.f. or less. He said the avenue streets would be an example of a neighborhood zoned R1-7 with smaller lots.

Council Member Folda asked that the acronyms in the Master Plan be changed for better clarity.

Community Development Director Mays noted if some of the acronyms were changed, it may not correspond with other aspects of the document.

A brief discussion followed regarding the Energy Zone being listed under Manufacturing.

City Clerk Krumm stated no changes could be made to the Master Plan request without sending the changes back to the Planning Commission for a report.

Mayor McManus expressed concern with the use of the word manufacturing and the interpretation for what is allowed in the Eldorado Valley. He said it was a significant issue on the proposed changes. He added that he did not feel the City needed an additional designation for the 5,000 s.f. lots.

A. Public hearing on proposed Master Plan Amendments

Mayor McManus declared it was the time and place scheduled to conduct the public hearing on the proposed Master Plan text amendment (MPA-19-037), and the proposed Master Plan Future Land Use Map amendment (MPA-19-038).

Neal Siniakin indicated he would not want to see 5,000 s.f. lots in the Master Plan since it may open the door for future developers. He added that he also disagreed with using the word "manufacturing."

No further comments were offered and the public hearing was declared closed.

Council Member Adams remarked he was not opposed to R1-5 lots. He said a variety of homes and lots sizes were good and the Master Plan addressed having a variety of homes. He said nice, unique homes can be built on smaller lots.

B. Consideration of Resolution No. 7025, a resolution of the City Council of Boulder City, Nevada to amend the Boulder City Master Plan to amend Chapter 4 to add references to the Open Lands-Conservation and Manufacturing-Energy categories, along with minor updates to the chapter for consistency (MPA-19-037)

No motion was made. No action taken.

- C. Consideration of Resolution No. 7026, a resolution of the City Council of Boulder City, Nevada to amend the Master Plan Future Land Use Map to change the land use designation for approximately 1,986 acres in the Eldorado Valley Transfer Area from Open Lands to Open Lands-Conservation (MPA-19-038)

Motion: Approve Resolution No. 7026 based on the findings that the amendment will conserve and promote the public health, safety and general welfare.

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

10. For possible action: Matters pertaining to modifying the Master Plan and Zoning Maps to increase area for solar development

A staff report had been submitted by City Planner Danielewicz and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report.

In response to a question by Council member Adams, Community Development Director Mays stated the failure of the last item did not have an effect on the current agenda item; there was no conflict. He said he would be working with the Planning Commission and would bring back the Master Plan Amendment to the Council.

- A. Public hearing on a proposed Master Plan Amendment and a proposed rezoning

Mayor McManus opened the public hearing for this item.

Greg Todd commented that the term manufacturing energy was appropriate for the use of solar panels; solar panels manufactured energy by converting the energy.

No further comments were offered, and the public hearing was declared closed.

- B. Consideration of Resolution No. 7027, a resolution of the City Council of Boulder City, Nevada to amend the Master Plan Future Land Use Map to change the land use designation for approximately 143.4 acres west of U.S. 95 within the Boulder City Townsite from Open Lands to Manufacturing-Energy (MPA-19-039)

Motion: Approve Resolution No. 7027 with the findings that the amendment will conserve and promote the public health, safety and general welfare.

Moved by: Council Member Adams **Seconded by:** Council Member Bridges

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

C. Consideration of Bill No. 1863, an Ordinance of the City of Boulder City, Nevada to amend the Zoning Map to rezone approximately 143.4 acres west of U.S. 95 within the Boulder City Townsite from GO, Government Open Space and S, Study to ER, Energy Resource (AM-19-343)

Motion: Approve Bill No. 1863 with the findings that amendment is in conformance with the proposed amendment to the adopted Master Plan for the City and promotes the health safety morals for the general welfare of the City.

Moved by: Council Member Bridges **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

Bill No. 1863 will become known as Ordinance No. 1639 effective October 14, 2019.

11. For possible action: Resolution No. 7028 a resolution of the City Council of Boulder City, Nevada, to the Clark County Board of Commissioners expressing opposition to the approval of the waiver of development standards for the Pro Gun Club Sign located at 12801 S. Highway 95

A staff report had been submitted by Community Development Director Michael Mays and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report.

In response to a question by Council Member Folda, City Attorney Morris stated the business owner would not have a viable claim for legal retribution if the City opposed the sign.

Mayor McManus stated he had attended the County Planning Commission meeting. He said the business owner had appealed the case to the Supreme Court. He said he was not in favor of allowing a sign that exceeded the current zoning laws.

Community Development Director Mays stated the current zoning allowed for a 50 s.f. sign. He said with the most recent proposal approved by the Clark County Planning Commission, the area of signage was 1,100 s.f. total.

Motion: Approve Resolution 7028

Moved by: Mayor McManus **Seconded by:** Council Member Bridges

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

12. For Possible Action: Consideration of proposed changes to the 2020 Land Management Process List

A staff report had been submitted by Community Development Director Michael Mays and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report. He stated this was the initial step in the process and an opportunity for the Council and community to see what was being proposed. He stated there were no outside submissions this year for the Land Management Process. He said with the recent amendments to the Land Management Process, there was now a mechanism for the Council to evaluate and consider parcels which have been on the list for three years. He said all parcels on the list added in 2017 could be considered. He stated staff's recommendation was included in the backup material; the blue parcels are recommended to remain on the list based on interest. He said the total acreage to retain was 1,279 acres. He noted the City was proposing to add one area to the LMP List referred to as Black Hills North. He said the area was approximately 1,275 acres and located directly north of Black Hills South. He said due to strong interest in the recent RFP for Black Hills South for solar, there would likely be similar requests for Black Hills North.

Motion: Advance the proposed addition of Black Hills North to the Planning Commission for consideration

Moved by: Council Member Bridges **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

13. For Possible action: Intent to take corrective action for Open Meeting Law violation which occurred at the October 8, 2019 City Council meeting, Item No. 13 – Review of draft Request for Proposals and possible Staff directive regarding land sale (Tract 350) around the Boulder Creek Golf Course

A staff report had been submitted by City Attorney Steve Morris and included in the October 22, 2019, City Council Agenda Packet.

City Attorney Morris provided an overview of the staff report. He explained his recommendation was to take corrective action and to table Item No. 14 if the Council wished to remove the median from Bristlecone Street.

Mayor McManus stated he provided copies of an Open Meeting Law opinion from the Attorney General's office to Council and staff, and that copies were available to public. He stated the item provided supported his opinion there was not a violation of the Open Meeting Law.

Council Member Bridges expressed concern the agenda title did not include the word "alleged."

Council Member Folda shared her opinion that Council had only discussed the Request for Proposals (RFP) and the attachments to the RFP were within the scope of the agenda. She said it was unreasonable for the Council to make a determination on the RFP without considering minimum development standards. She said it was her opinion Council discussed what was on the agenda.

Council Member Adams expressed frustration that nothing was said until after the meeting and briefings.

In response to a question by Council member Adams, City Attorney Morris confirmed there was no admission of a violation if the previous action taken was voided.

Council member Adams stated he was comfortable voiding the previous action taken by Council and moving forward.

Council Member Bridges agreed and said if the Council had the opportunity to have a discussion in a way that is clear and concise, she was comfortable voiding the action and moving forward.

Mayor McManus expressed concern regarding how the item was described on the agenda; the item was agendized as an actual violation and not an allegation. He stated it was a significant issue. He said the Council had only received information a verbal allegation had been made, so he was unaware of specific concerns by members of the community. He commented the Council could not allow people to make allegations in order to negate decisions. He said with respect to the allegation itself, what occurred was the City had not agendized the amendments to standards for streets and roadways.

City Attorney Morris stated the allegation was that the Council had strayed from the clear and complete agenda item to discuss and take action on street design standards that were required in the RFP, and the public was not given proper notice. He stated the State allowed public bodies to take corrective action and minimize any action which could occur for an alleged Open Meeting Law violation without admission of any wrongdoing. He said it was his recommendation if the Council wanted to move forward with removal of the median, to table Item No. 14 and provide direction to staff to bring back an item to take action on the design standards for the specific roadways.

Mayor McManus stated the action stated was not his recollection. He said he did not recall a Council member amending any standard for the streets. He questioned if the issue was really about an OML violation, or somebody not liking the decision made and trying to negate a decision by the Council.

City Attorney Morris reviewed the action taken by Council; to remove the median. He said nobody was debating the Council's ability to take action on the design standards; however, the action was not within the scope of the agenda title. He said the City was erring on the side of complete transparency and openness. He said it is incumbent upon the City to take corrective action when it has the ability to do so. He said members of the public have expressed their concern about not having the ability to speak on the matter the Council took action on.

Mayor McManus read a portion of the OML opinion from the Attorney General pertaining to a higher degree of specificity when there is an item of public interest. He said it is not necessary to agendize every possible detail of what is to be discussed. He said the backup material gave clear indication of what was included in the RFP.

Council Member Adams recommended Council follow the recommendation of the City Attorney; it was the City Attorney's opinion there was a violation.

Council member Folda stated a very similar conversation regarding the land surrounding the golf course took place in 2016. She said she believed the reason for the alleged OML

violation was because there was a different City Council in place, not because there was an OML violation. She said it was an attack from people in a certain area of town not getting what they want. She stated the Council was within the scope of the agenda.

City Clerk Krumm stated both the staff and City Council work for the City. She offered clarification stating the street design standards were supporting documents to the RFP, not the RFP itself. She stated the design standards were adopted previously as a stand alone item; any amendments to the street design standards would require a separate agenda item. She stated it was very disappointing to hear members of Council state the matter was being brought forward in order to negate a previous decision. She stated although staff did not address the alleged violation at the time it occurred, the matter had not been brought forward during briefings. She said it would be impossible to know every detail of every document included in the packet materials. She stated it was staff's desire to do what is right to support the Council, and to do what is right for the community. She stated based on the agenda title, the people who live off of Bristlecone would know the Council would be discussing the sale of the land; voters approved the sale of the land in 2010. However, they would have no way of knowing the supporting documents of the RFP would be amended.

Mayor McManus remarked the Council was not to be dictated to by City staff. He said the Council could make up their own mind based on what they determine as facts. He stated Council could seek research from anybody and from any source as they please. He said the Council was not obligated to follow the advice of the City Attorney if they do not feel it is appropriate.

Motion: To take corrective action for the alleged open meeting law violation

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

14. For Possible Action: Review of draft Request for Proposals and possible Staff directive regarding land sale (Tract 350) around the Boulder Creek Golf Course

A staff report had been submitted by Finance Director Diane Pelletier and included in the October 22, 2019, City Council Agenda Packet.

A brief discussion occurred regarding how to proceed with the item and if it should be postponed until the street standards could be discussed.

Council Member Folda suggested that the agenda item be redrafted to allow for more discussion and a more comprehensive RFP. She asked for additional information and discussion on the \$6M drop in the appraisal value.

Motion: Abeyance of Item No. 14 and bring back the item no later than February 2020 when Council has provided input to staff

Moved by: Council Member Bridges **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

15. For Possible Action: Temporary suspension of Section No. 3.1 of the City Council's Rules of Procedure to vacate the November 26, 2019 regularly scheduled City Council meeting

A staff report had been submitted by City Clerk Lorene Krumm and included in the October 22, 2019, City Council Agenda Packet.

City Clerk Krumm provided an overview of the staff report.

In response to a question by Mayor McManus, City Clerk Krumm confirmed the Council would still be meeting the Charter requirement of holding at least one meeting per month if it opted to vacate the November 26, 2019 meeting. She also confirmed the Council had the ability to call for a special meeting if there was an urgent matter.

Council Member Folda noted that there have been two meetings in November for the past 20 years. She said she understands staff wants the day off. She said although school is out for the entire week this year, the next two years there will be school during the week of Thanksgiving.

Council Member Adams expressed concern that the last two meeting packets have been large, and trying to combine two meetings into one may be difficult.

Council Member Bridges noted the Wednesday prior to Thanksgiving is the biggest travel day of the year. She said she likes to see a full room during Council meetings and does not believe the meeting will be as well attended on the Tuesday before Thanksgiving. She said she was planning on calling in because she had plans for the holidays.

Motion: To temporarily suspend Section No. 3.1 of the City Council's rules of procedure to vacate November 26, 2019 meeting

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

16. City Manager's Report

- A. Claims Paid List, September 2019
- B. Financial Report, September 2019

The report was received.

17. For Possible Action: Review and possible adjustment or repeal of utility rate increase scheduled to begin in January 2020 (as requested by Mayor McManus)

Finance Director Pelletier commented the City had received recent information from the bond counsel regarding the debt service coverage ratio. She stated the City could cover its debt service coverage ratio without the upcoming rate increase.

Mayor McManus remarked repealing the automatic rate increases would benefit the residents.

Council Member Folda agreed and noted that many citizens will appreciate not having a rate increase.

Motion: To direct Staff to bring back resolutions to repeal the automatic rate increases in Resolution No. 6489 section L, Resolution No. 6490 section I, and Resolution No. 6491 section E

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

18. For Possible Action: Discussion and possible staff directive regarding retention of a special counsel by the City Council to review and advise on the following issues: (as requested by Mayor McManus)

Mayor McManus stated the City Attorney had a tremendous amount of conflict of interest; it was inappropriate for the City Attorney to recommend removal of the agenda item.

City Attorney Morris repeated his objection to Item No. 18. He stated he had an ongoing obligation to protect the City Council from possible Open Meeting Law violations. He said he could not determine if a conflict had occurred without more specificity on the agenda title. He added that matters of public concern require a heightened obligation of specificity. He said the item completely lacked specificity. He said there were many problems with the agenda title and it was not due to a lack of trying to obtain the specificity by City staff. He noted the Council always had the ability to meet with him and others to help with formulating an appropriate agenda title. He stated there were not just implications with the Open Meeting Law, but with the Charter and State law as well.

Mayor McManus stated the City Attorney should have recused himself from making any comments regarding this agenda item. He noted the item may have an impact on the employment contract of all of the municipal officers, including the City Attorney. He reiterated there was a conflict of interest for the City Attorney. He stated it was one of the reasons he was moving forward with the item and not taking the recommendation of the City Attorney. He reviewed the agenda item and said it was clear and complete. He said with respect to Item C, the intent was to allow members of the City Council to express ideas regarding the hiring of the special counsel. He said he would withdraw discussion of Item C as he had received feedback from others. He said he has spoken to the Attorney General's office and although he did not receive an official opinion, he received some opinions which substantiated his agenda item was clear and complete.

A. Nevada Open Meeting Law standards and requirements

Mayor McManus stated additional advice was needed regarding issues with the Nevada Open Meeting Law. He said there has been conflicting and inconsistent information provided. He said the Council has the ability and the need to have an attorney where they can ask questions. He said the wording in the Charter was clear the City Council has the ability to hire legal counsel if in the best interest of the City.

B. Employment contract of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge

Mayor McManus stated he was the only member of Council involved in the hiring of the City Attorney and City Manager. He said he had voted against both contracts. He said other members of Council should have the opportunity to have someone with a legal

background to provide information to them and formulate a decision what should be done with the contracts, if anything. He said it was a conflict of interest for the City Attorney to provide comments or recommendations on his own contract. He said the discussion does not include the process for employing a special counsel. He said he has conducted his own research and believes it meets all requirements of the Open Meeting Law.

Council Member Bridges expressed she only voted to keep the matter on the agenda in order to share her thoughts. She said the item made her very uncomfortable. She said she does not feel any need to employ a special counsel; she had received training and many materials regarding the Open Meeting Law when she was elected. She stated she understood the employment contracts. She said she has had no reason not to trust staff and the information provided to the City Council. She said she had met with the City Attorney personally to ask questions and address concerns.

Council Member Folda commented that retention of a special council is appropriate since the City Attorney cannot review his own contract. She expressed support of the item.

Mayor McManus remarked the item in the City Attorney's contract regarding working outside of the City was a clear violation of the City Charter, and the issue needs to be addressed.

C. Other issues as determined by a majority of City Council

Motion: To direct Staff to employ a special counsel to advise the City Council on Open Meeting Law issues and the employment contracts of the City Manager, City Clerk, City Attorney, and Municipal Judge. The employment is in the interest of the City and special counsel will be employed by and report directly to City Council as provided for in the City Charter

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus and Council Member Tracy Folda (2)

NAY: Council Member James Howard Adams and Council Member Claudia Bridges (2)

Absent: Council Member Warren Harhay (1)

The motion failed.

19. For Possible Action: Discussion and possible staff directive regarding the recommendation from the Parks and Recreation Committee to construct new soccer fields (as request by Mayor McManus)

Public Works Director Littrell explained the changes made to the Capital Improvement Plan (CIP) including the removal of the multiple use soccer field.

Mayor McManus thanked those who serve on the Parks and Recreation Committee and for listening to the desires of the community. He invited committee members to communicate with City Council. He stated his concern was the evaluation of how the capital improvements fit in with other needs within the City. He said the Parks and Recreation Department had a significant amount of proposed capital projects.

Council Member Folda suggested looking into why the City fields are not being used, and see if the City could make it easier for the public to take advantage of those resources.

20. Public Comments

Mr. Siniakin expressed his support for the current City Council. He stated that City Clerk Krumm hid Mr. Morris' resume from the public when he was hired, and that he did not have the necessary qualifications. He stated City Attorney argued in his own pecuniary interest. He said his contract was in violation of the City Charter. He stated City Clerk Krumm intentionally violated the Open Meeting Law for the benefit of Mr. Morris, and Deputy City Clerk McKay assisted. He added Tract 350 should be reconsidered. He noted that traffic on the highway has dropped and businesses on the highway have been negatively affected. He asked Council address the issue.

Ross Johnson asked if the street design standards for Bristlecone Street had been changed.

Mayor McManus suggested he speak with Mr. Mays about his concerns.

Peggy Leavitt asked that the Mayor consider allowing public comments after each agenda item. She said when many of the current Council members were running for office, they campaigned on openness and transparency. She did not understand why public comment was not allowed after each agenda item. She noted the previous mayor was criticized of reducing public comment to three minutes. She stated although there may not have been intent to violate the Open Meeting Law, the Council should err on the side of caution. She said people who lived in the area wanted to be heard on the issue. She also reminded Council that they represent everyone in the City. She said to hear the comment "that section of town" and "push pull" was very offensive. She said all residents were concerned about their neighborhoods.

Mr. Stuart stated the behavior shown toward staff members during the meeting was embarrassing. He remarked that Council Member Folda's comment "people in that area" was disrespectful and unprofessional, and he was very upset. He stated it was important for the Council to be clear on agenda items because although the land by Bristlecone was approved for sale many years ago, there were new people in the neighborhood who had the right to know what action the Council was going to take regarding the streets. He said it was important to have a median on Bristlecone for safety reasons. He said there were many children in the area and the street should have a median. He reminded Mayor McManus and Council that they represent the citizens and not themselves.

Judith Hoskins stated that citizens voted for Council to make decisions. She stated people should not be so sensitive.

21. City Council's Report

Council Member Bridges stated she went to the Southern Nevada Water Authority Meeting and they approved the assistance agreement with the Bureau of Reclamation to receive funding for the Water Smart Landscape Rebate Program. She stated they also discussed the gallons of effluent that goes into the desert and how they can assist Boulder City to return the effluent to the lake.

Council Member Adams reported that the next Southern Nevada Health District meeting was Thursday. He added that if anybody wants to reach out to him with comments, he can be contacted via email at jadams@bcnv.org or phone 702.930.4685. He thanked everyone for the birthday wishes.

Mayor McManus noted they all have email address on the City website and are willing to speak with people about concerns they have. He noted that Council Member Harhay was not present for health reasons and asked for people's thoughts and prayers in his behalf.

There being no further business to come before the Council, Mayor McManus adjourned the meeting at 10:19 p.m.

Kiernan McManus, Mayor

ATTEST:

Lorene Krumm, City Clerk

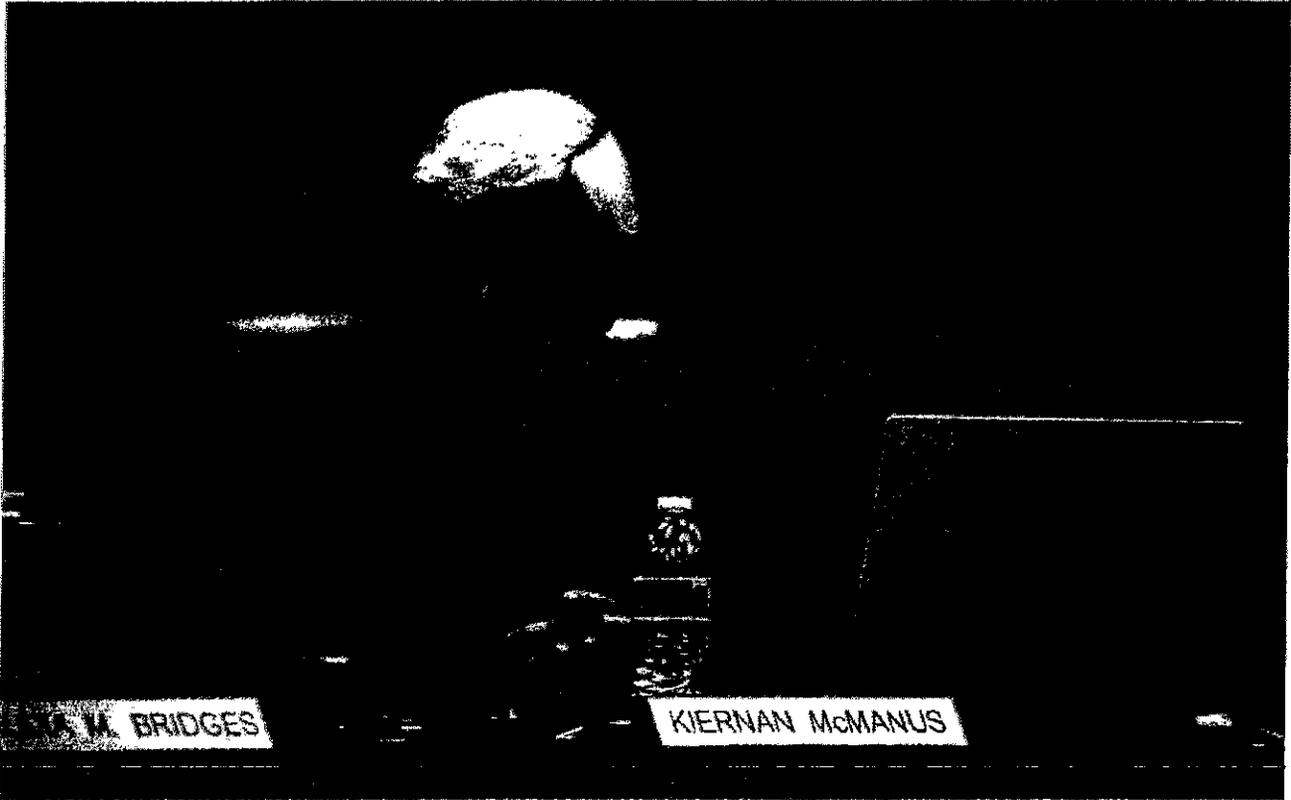
ATTACHMENT 9

See enclosed thumb drive -

**Video of Oct. 22, 2019
Boulder City
City Council Meeting**

ATTACHMENT 10

Council disregards attorney's advice



(Celia Shortt Goodyear/Boulder City Review) Mayor Kiernan McManus discusses his disagreement with City Attorney Steve Morris' belief that his agenda item at the Oct. 22 meeting about hiring special counsel could be an open meeting law violation.

By Celia Shortt Goodyear Boulder City Review



October 23, 2019 - 4:22 pm

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In a divided vote City Council went against the recommendation of City Attorney Steve Morris at its meeting Tuesday, Oct. 22, and could face an open meeting law violation for including an item on the agenda.

The item was for discussion and a possible staff directive about hiring an outside attorney to review and advise council members on Nevada's open meeting law; the employment contracts of the city attorney, city clerk, city manager and municipal judge; and other issues as determined by a majority of council.

Morris recommended the item be removed from the agenda because it lacked the specificity required and that council could face an open meeting law violation because of it.

“I have an ongoing obligation, Mr. Mayor, to protect the council from possible open meeting law violations,” Morris said. “I can’t possibly determine whether or not a conflict has occurred without the specificity that is required by the open meeting law ... that is not found in item 18.”

Morris also said that the open meeting law, city charter and state law were implicated through the situation.

The lack of information in the “other issues” portion of the item also raised concern from several residents, who spoke during the public comment session before the agenda was approved.

“This part of tonight’s agenda language is too vague to be useful in any public agency’s agenda,” said Duncan McCoy, a former City Councilman. “This is rather like ‘other new business’ and not descriptive of what the council’s conversation will cover. Again, go back and look at how the attorney general’s office has ruled in previous cases on vague agenda language.”

Longtime resident Richard Stewart also said the “other issues” language was vague.

“You don’t really tell us what you’re going to look into You only give a few things and after that (it’s) whatever we decide,” he said. “That’s pretty open in my opinion and I think that needs to be narrowed down.”

Resident, former mayor and former councilman Rod Woodbury also expressed a concern that “other issues” was too vague.

“I don’t know what that means and I can’t give a ... comment,” he said.

Mayor Kiernan McManus disagreed with Morris and said he would not remove the item from the agenda.

“I’ve requested item 18,” he said. “I have spelled out my reasoning for doing so. I will go into further detail on that as we get into that item tonight and therefore will not be removing the item from the agenda.”

Council approved keeping the item on the agenda 3-1, with Councilman James Howard Adams voting against it.

Councilwoman Claudia Bridges said she did not vote to remove the item from the agenda because she wanted to express her opinions about it.

“It may or may not be specific enough,” she said. “It may or may not be complete enough, but it sure as heck made me very uncomfortable.”

During the discussion about hiring outside counsel, McManus said he believed Morris had a “tremendous amount of conflict of interest and was inappropriate” in asking for the agenda item to be removed prior to having it heard by council or them commenting about it.

McManus said the agenda item may have an impact on the employment contracts for municipal officers including Morris’ and that because of that conflict of interest, Morris should have recused himself.

“I think you have a substantial conflict of interest by weighing in on an issue that has regards to your contract for employment. That’s one of the reasons why I’m going forward with this and not taking your recommendation as far as removing the item,” he said repeating his desire to hire an outside attorney.

With the “other items” language, McManus said he wrote it that way because he did not know what other council members would like to do and

because of the open meeting law they could not deliberate about reasons for retaining special counsel before the meeting.

Concerns about its vagueness, however, caused him to withdraw any discussion about “other issues.”

He said he thought special counsel should be hired so that council members could have additional legal advice about the open meeting law as well as a third party to look at the employment contracts.

“I’m not trying to point fingers at anyone,” McManus said. “I’m just saying that with the staff we currently have, I believe we have the ability and the need to have another attorney we can ask questions from.”

Councilwoman Tracy Folda agreed with McManus about the need to retain special counsel because the city attorney was unable to perform his duty when reviewing his own contract.

Bridges said she did not believe there was a need for special counsel to be hired to go over the open meeting law and that she trusted city staff.

Adams did not comment during the discussion.

The vote ended in a tie, with Adams and Bridges voting against hiring a special counsel and McManus and Folda voting for it. Since it was a tie, the motion died.

Contact reporter Celia Shortt Goodyear at cgoodyear@bouldercityreview.com or at 702-586-9401. Follow her on Twitter @csgoodyear.

ATTACHMENT 11

Section 6 of Attorney General Complaint Form

WITNESSES

1. City Attorney Steven Morris
2. City Clerk Lorene Krumm
3. City Manager Al Noyola
4. Other Boulder City staff members that may be identified by the foregoing
5. Individuals who provided public comment, including:
 - a. Duncan McCoy
 - b. Ross Johnson
 - c. Richard Stewart
 - d. Rod Woodbury
 - e. Fred Voltz
 - f. Judge Victor Miller
6. Myself - Peggy Leavitt

EXHIBIT “4”

BOULDER CITY, NEVADA

August 6, 1959

TO THE HONORABLE, THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, NEVADA:

We, the undersigned, being a majority of the persons elected to frame a charter for Boulder City, Nevada, pursuant to the provisions of NRS 267.060, herewith submit such charter to you.

We respectfully request that you:

1. Cause the proposed charter to be published once in the Boulder City News, a newspaper published in the unincorporated area; and
2. Cause copies of the proposed charter to be posted in 3 of the most public places of the unincorporated area for a period of 30 days; all as is provided by the provisions of NRS 267.060.

Respectfully submitted,

Robert Broadbent
 Robert Georgeson
 Eloise V. Blue
 C.D. Potts, Jr.
 Teresa Denning
 Thomas Godbey
 Amalette Wilson
 Albert Franklin
 Marwood Doud
 Leonard Atkinson
 Andrew Mitchell
 Alvin Wartman
 Morgan Sweeney

ORDER

WHEREAS, A majority of the persons elected to frame a charter for that certain area commonly known and designated as "Boulder City" have submitted such charter to this board pursuant to the provisions of NRS 267.060; now, therefore,

IT IS HEREBY ORDERED that the county clerk of Clark County, Nevada, shall cause the proposed Charter so submitted to be published in the Boulder City News, a newspaper in the unincorporated area, once on August 13, 1959; and

IT IS FURTHER ORDERED that the county clerk of Clark County, Nevada, shall cause copies of the proposed charter to be posted in 3 of the most public places of the unincorporated area, such posting to be done immediately.

Dated this 6th day of August, 1959
 Board of County Commissioners
 Harley Harmon,

Chairman
 Clesse Turner
 Arthur Robert Alson
 CERTIFICATION OF CHARTER

BOULDER CITY, NEVADA

I, HARLEY E. HARMON, Chairman of the Board of County Commissioners of Clark County, Nevada, do hereby certify that in accordance with the terms and provisions of Section 8 of Article VII of the Constitution, and the laws of the State of Nevada, the electors of the city of Boulder City caused a Special Election to be held on the 23rd day of June, 1959, for the purpose of electing 15 qualified electors to prepare a charter for the city of Boulder City; that due notice of such election was given in the manner provided by law; that on the 23rd day of June, 1959, the election was held, and the votes cast thereat were duly canvassed by the legislative authority of the city, and the following named persons were declared duly elected to prepare and propose a charter for the city of Boulder City:

Leonard Atkison
 Joe Manix
 Eloise Blue
 Andrew J. Mitchell
 Robert Broadbent
 C.D. Potts
 Teresa Denning
 Morgan J. Sweeney
 Marwood Doud
 Alvin N. Wartman
 Albert Franklin
 Dr. Thomas S. White
 Bob Georgeson
 Arnaletta (Ketch) Wilson
 Tom Godbey

That thereafter, on the 6th day of August, 1959, the Board of electors duly returned a proposed charter for the city of Boulder City, signed by the following members thereof:

Robert Broadbent
 Robert Georgeson
 Eloise V. Blue
 C.D. Potts, Jr.
 Teresa Denning
 Thomas Godbey
 Arnaletta Wilson
 Albert Franklin
 Marwood Doud
 Leonard Atkison
 Andrew Mitchell
 Alvin Wartman
 Morgan Sweeney

That thereafter, such proposed charter was duly published in the Boulder City News on August 13, 1959 and was posted on the 6th day of August in the following public places:

Office of the Justice of the Peace, 416 Nevada Highway, Boulder City Bulletin Board in lobby of Municipal Building, Boulder City Police Station, Boulder City.

That thereafter, on the 29th day of September, 1959, at a special election duly called by the legislative authority of such city the proposed charter was submitted to the qualified electors thereof, and the returns of the election were duly canvassed by the legislative authority thereof at a meeting held on the 1st day of October, 1959, and the result of the election was found to be as follows:

For the proposed charter 745 votes
 Against the proposed charter 167 votes
 Majority for the proposed charter 578 votes

Whereupon the charter was duly ratified by a majority of the qualified electors voting at the election.

And I further certify that the foregoing is a full, true and complete copy of the proposed charter so voted upon and ratified as aforesaid.

In testimony whereof, I hereunto set my hand and affix the corporate seal of the County at my office this 1st day of October, 1959.

HARLEY E. HARMON, Chairman
Board of County Commissioners
Clark County, Nevada
(SEAL)

ATTEST:

HELEN SCOTT REED, COUNTY CLERK
and Ex-Officio Clerk of the
Board of County Commissioners

Ref. N.R.S. 267.000

I certify that the within Charter is a true and correct copy of the Charter of Boulder City and has been recorded in the Charter Book of Boulder City on October 28, 1959, and has been recorded and attested by the Mayor and Acting City Clerk.

Eloise V. Blue
Acting City Clerk BOULDER CITY CHARTER

THE PEOPLE OF BOULDER CITY, NEVADA,
DO HEREBY ENACT AS FOLLOWS:

ARTICLE I

INCORPORATION; FORM OF
GOVERNMENT; POWERS

- 1. Incorporation
- 2. Form of Government
- 3. Powers of the City

SECTION 1. INCORPORATION

1. For the uses and purposes hereinafter mentioned, the inhabitants of that portion of Clark County, Nevada, embraced within the limits set forth in subsection 2, 3 and 4, aggregating 133,238.47 acres or 208 square miles, more or less, together with the inhabitants of any and all areas hereafter lawfully annexed thereto, shall remain, be and constitute a body politic and corporate by the name and style of "Boulder City", and by that name and style they and their successors shall be known in law, have perpetual succession, and sue and be sued in all courts.

2. Boulder City shall include all of the inhabitants, lands, tenements and property included within the

tract of land described and platted as shown on a certain "Map X-300-461" prepared as Exhibit A to a Quitclaim Deed from THE UNITED STATES OF AMERICA to BOULDER CITY dated January 4, 1960, a certified true copy of which Map was recorded on March 4, 1970, as Number 11413 on page 25 of Local Government Plats Official Records Book Number 15 in Clark County, Nevada, Records, and a copy of which Map is on file in the City Hall of Boulder City, said Map being hereby made a part of this Charter by specific reference thereto, said tract of land shown on said Map being more particularly described as follows:

Government Lots 9, 10, 11, and 12 in the North half of the North half of Section 1; the South half of the North half of Section 1; the South half of Section 1; Government Lots 8 and 9 in the Northeast quarter of Section 2; Government Lots 10 and 16, and that portion of Government Lot 21 lying South of the right-of-way of United States Highway 93-466 and East of the right-of-way of United States Highway 95 (as both of such rights-of-way are hereinafter specifically defined) in the East half of Section 2; that part of Government Lot 1 lying East of the right-of-way of United States Highway 95 and South of the right-of-way of United States Highway 93-466 in the East half of Section 11; those parts of Government Lots 4, 5, and 8 lying East of the right-of-way of United States Highway 95 in the East half of Section 11; the East half of the East half of Section 11; Section 12; Section 13; those parts of Government Lots 1, 4, 5, and 8 lying East of the right-of-way of United States Highway 95 in the East half of Section 14; the East half of the East half of Section 14; Government Lots 1, 4, and 5 in the Northeast quarter of Section 23; the Northeast quarter of the Northeast quarter of Section 23; Government Lots 1, 2, 3, and 4 in the South half of the North half of Section 24; and the North half of the North half of Section 24; in Township 23 South, Range 63 East, of the Mount Diablo Base and Meridian; and

Government Lots 8, 9, and 10 in the South half of the South half of Fractional Section 1; Fractional Section 12; Fractional Section 13; and Fractional Section 24; in Township 23 South, Range 63¹/₂ East, of the Mount Diablo Base and Meridian; and

The South half of the South half of Section 28; the South half of the South half of Section 29; Government Lot 12 in the Southwest quarter of the Southwest quarter of Section 30; the East half of the West half of the South half of the South half of Section 30; the East half of the South half of the South half of Section 30; Government Lots 5, 8, 9, and 12 in the West half of the West half of Section 31; the East half of the West half of Section 31; the East half of Section 31; Section 32; Section 33; the South half of Section 34; and the South half of Section 35; in Township 22 South, Range 64 East, of the Mount Diablo Base and Meridian; and

Section 2; Section 3; Section 4; Section 5; Government Lots 11, 14, 15, and 17 in the West half of the West half of Section 6; the East half of the West half of Section 6; the East half of Section 6; Section 7; Section 8; Section 9; Section 10; Section 11; Section 14; Section 15; Section 16; Section 17; Section 18; Section 19; Section 20; Section 21; Section 22; Section 23; Section 24; Section 25; and Section 26; in Township 23 South, Range 64 East, of the Mount Diablo Base and Meridian, all in the County of Clark, State of Nevada, containing 21,674.23 acres, more or less.

That portion of the East boundary of the original right-of-way of United States Highway 95, together with that portion of the South boundary of the original right-of-way of United States Highway 93-466 lying within the West half of the East half of Sections 2, 11 and 14, in Township 23 South, Range 63 East, of the Mount Diablo Base and Meridian, which is part of the West boundary of Boulder City, and to which reference was made in the foregoing description, is more specifically described as follows:

Beginning at the originally-platted point of intersection of the East side of the right-of-way of United States Highway 95 with the original West boundary of the Boulder Canyon Project

Reservation, this beginning point being located 2,315 feet North of Corner Number 2, the Southwest corner of said reservation;

Thence with the East side of the original right-of-way of United States Highway 95, as defined by the Nevada State Highway Map for Project Number 006-1(1) (and by said Map X-300-461), North 9 degrees 40 minutes East, 2,156 feet to a point on a curve bearing toward the West;

Thence with the said curve, with a central angle of 13 degrees 06 minutes and a radius of 5,200 feet, for a curve distance of 1,188.92 feet to a point of tangency;

Thence North 3 degrees 26 minutes West for a tangent distance of 4,979.48 feet to a point of a curve bearing toward the East;

Thence with such second curve with a central angle of 19 degrees and a radius of 1,800 feet, for a curve distance of 596.98 feet to a point of tangency;

Thence North 15 degrees 34 minutes East for a tangent distance of 563.22 feet to a point of a curve bearing toward the West;

Thence with such third curve, with a central angle of 21 degrees 22 minutes 20 seconds and a radius of 2,200 feet, for a curve distance of 820.63 feet to a highway monument marking the original intersection of the East side of the right-of-way of United States Highway 95 with the South side of the right-of-way of United States Highway 93-466 leading to Boulder City;

Thence with the South side of the original right-of-way of United States Highway 93-466 as it curves in a Southeasterly direction with a central angle of 4 degrees 11 minutes 10 seconds and a radius of 3,700 feet with a chord bearing of South 54 degrees 08 minutes 40 seconds East, for a curve distance of 270.32 feet to a point on the North-South one-sixteenth section line dividing the East half of Section point being South 0 degrees 5 minutes West 66.73 feet from the one-sixteenth section corner marking the Southeast corner of Government Lot 21 in Section 2, Township 23 South, Range 63 East, of the Mount Diablo Base and Meridian, as first described hereinabove.

3. Boulder City shall also include all of the inhabitants, lands, tenements and property included within tracts of land conveyed to Boulder City by the Colorado River Commission of the State of Nevada on July 9, 1995, by Deed recorded July 10, 1995, as Instrument Number 00559, Book Number 950710, in the Official Records Book, Office of the County Recorder, Clark County, Nevada.

4. Boulder City shall also include all of the territory which was annexed to the City pursuant to Ordinance No. 1356 of the City of Boulder City, effective June 26, 2008. (Add. 28, Amd. 1, 11-2-2010)

SECTION 2. FORM OF GOVERNMENT

1. The municipal government provided by this Charter shall be known as the "council-manager government". Pursuant to its provisions and subject only to the limitations imposed by the State constitution and by this Charter, all powers of the City shall be vested in an elective council, hereinafter referred to as "the Council", which shall:

(a) Enact local legislation

(b) Adopt budgets

(c) Determine policies; and

(d) Appoint the City Manager, who shall execute the laws and administer the government of the City.

2. All powers of the City shall be exercised in the manner prescribed by this Charter, or if the manner is not prescribed, then in such manner as may be prescribed by ordinance. (1959 Charter)

SECTION 3. POWERS OF THE CITY

1. The City shall have all the powers granted to municipal corporations and to cities by the constitution and laws of this State, together with all the implied powers necessary to carry into execution all the powers granted. (Add. 4, Amd. 1, 5-6-1969)

2. The City may acquire property within or without its corporate limits for any City purpose, in fee simple or any lesser interest, or estate, by purchase, exchange, gifts, devise, lease, or condemnation, and may sell, exchange, lease, mortgage, hold, manage, and control such property as its interests may require or that will result in the maximum benefit accruing to the City from such action. (Add. 4, Amd. 2, 5-6-1969)

3. Except as prohibited by the constitution of this State or restricted by this Charter, the City shall and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

4. The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the City shall have and may exercise all powers which, under the constitution of this State, it would be competent for this Charter specifically to enumerate. (1959 Charter)

ARTICLE II THE COUNCIL

Section

4. Number; Selection and Term; Recall
5. Qualifications
6. Salaries
7. Mayor; Mayor Pro Tem; Duties
8. Powers
9. Appointment of City Manager
10. Removal of City Manager (Repealed by Add. 3, Amd. 5, 5-2-1967)
11. Council Not to Interfere in Appointments or Removals
12. Vacancies in Council
13. Creation of New Departments or Offices; Change of

Duties

14. City Clerk
15. City Attorney
16. Induction of Council into Office; Meetings of Council
17. Council to be Judge of Qualifications of its Members
18. Rules of Procedure; Journal
19. Council's Power to Make and Pass Ordinances, Resolutions
20. Voting on Ordinances and Resolutions
21. Enactment of Ordinances; Subject Matter, Titles
22. Introduction of Ordinances; Notice; Final Action; Publication
23. Adoption of Specialized, Uniform Codes
24. Codification of Ordinances; Publication of Code
25. Independent Annual Audit

Throughout this document all references to the masculine also include the feminine, where the context so requires, and references to the singular also include the plural and vice versa, where the context so requires. (Add. 26, Amd. 1, 6-2-2009)

SECTION 4. NUMBER; SELECTION AND TERM; RECALL

1. Except as otherwise provided in section 96, the City Council shall have four Council Members and a Mayor elected from the City at large in the manner provided in Article IX, for terms of four years and until their successors have been elected and have taken office as provided in section 16. No Council Member shall represent any particular constituency or district of the City, and each Council Member shall represent the entire City.

2. (Repealed by Amd. 1, 6-4-1991)

3. The Council Members and the Mayor are subject to recall as provided in section 111.5. (Add. 29, Amd. 1, 2011)

SECTION 5. QUALIFICATIONS

1. No person shall be eligible for the office of Councilman or Mayor unless he is a qualified elector of Boulder City and has been a resident of the City for at least 2 years immediately prior to the election in which he is a candidate. He shall hold no other elective public office, but he may hold a commission as a notary public or be a member of the Armed Forces reserve. No employee of the City or officer thereof, excluding City Councilmen, receiving compensation under the provisions of this Charter or any City ordinance, shall be a candidate for or eligible for the office of Councilman or Mayor without first resigning from City employment or City office.

2. If a Councilman or the Mayor ceases to possess any of the qualifications enumerated in subsection 1 or is convicted of a felony, or ceases to be a resident of the City, his office shall immediately become vacant. (Add. 17, Amd. 1, 11-5-1996)

SECTION 6. SALARIES

1. The Council may determine the annual salaries of the Mayor and Councilmen by ordinance, but no ordinance increasing such salaries shall become effective during the term for which the Mayor or Councilman was elected or appointed.
2. The Mayor and Councilmen shall be reimbursed for their personal expenses when conducting or traveling on City business. Reimbursement for use of their personal automobiles shall be at the rate per mile established by the IRS rules.
3. The Mayor and Councilmen shall receive no additional compensation or benefit other than that mandated by State or Federal law. (Add. 23, Amd. 1, 9-3-2002)

SECTION 7. MAYOR: MAYOR PRO TEM: DUTIES

1. The Mayor shall:
 - (a) serve as a member of the City Council and preside over its meetings;
 - (b) have no administrative duties;
 - (c) be recognized as the head of the City government for all ceremonial purposes and for purposes of dealing with emergencies if martial law has been imposed on the City by the State or Federal Government.
2. The City Council shall elect one of its members to be Mayor pro tem, who shall:
 - (a) hold such office and title, without additional compensation, for period of one year;
 - (b) perform the duties of the Mayor during the absence or disability of the Mayor;
 - (c) assume the position of Mayor, if that office becomes vacant, until the next regular election.
(Add. 17, Amd. 1, 11-5-1996)
3. (Repealed by Add. 17, Amd. 1, 11-5-1996)
4. (Repealed by Add. 17, Amd. 1, 11-5-1996)

SECTION 8. POWERS

All powers of the City and the determination of all matters of policy shall be vested in the City Council. By way of illustration, and not by way of limitation, the Council shall have the power to:

1. By a concurring vote of not less than three of its members, appoint to and/or remove from office the following City officers: (a) the City Manager; (b) the City Attorney; (c) the City Clerk; and/or (d) the Municipal Judge; subject to these provisions:

- A. The appointments shall be for indefinite terms, and each such officer shall receive such compensation and other benefits as may be determined by resolution of the Council from time to time. (Add. 15, Amd. 2, 6-4-1991)
- B. Any City officer may be temporarily suspended with full pay at any time by a majority vote of the Council, but no City officer may be removed from office unless he has first been given an opportunity for a hearing before the Council. The Council shall not hold a closed meeting to consider terminating such officer or to consider the character, alleged misconduct, professional competence, or physical or mental health of such public officer. The public officer may be assisted by his own legal counsel at the hearing. Any action of the Council following such hearing shall be considered final and conclusive. Written notice of the meeting shall be given to such officer in the manner set forth in NRS 241.033. (Add. 27, Amd. 1, 6-2-2009)
- C. If a City officer is so removed, the Council will appoint a person as a temporary replacement to perform the duties of the removed officer, and will appoint a qualified person as a permanent replacement officer as soon as possible.
- D. No person shall be appointed as a City officer who is a grandparent, parent, uncle, aunt, brother, sister, nephew, niece, child or grandchild, by birth, marriage, or adoption, of a City officer, employee, or Council member at the time of appointment. (Add. 15, Amd. 2, 6-4-1991)
2. Establish other administrative departments and distribute the work of divisions.
 3. Adopt the budget of the City.
 4. Inquire into the conduct of any office, department or agency of the City and make investigations as to municipal affairs. (1959 Charter)
 5. Appoint the members of all boards, commissions, and committees for specific or indefinite terms as provided elsew here in this Charter or in various resolutions or ordinances, with all such persons being removable from office only for cause, provided, how ever, that all persons so appointed must be and remain bona fide residents of the City during the tenure of each appointment. (Add. 15, Amd. 2, 6-4-1991)
 6. Adopt plats. (1959 Charter)
 7. Adopt and modify, from time to time, an official general map of the entire City, and one or more official maps of various portions of the City. (Add. 15, Amd. 2, 6-4-1991)
 8. Regulate and restrict the height and number of stories of buildings and other structures, the size of yards and courts, the density of populations and the location and use of buildings for trade, industry, business, residence or other purposes. (1959 Charter)
 9. Provide for an annual auditing of the City's financial accounts and records by independent auditors. (Add. 15, Amd. 2, 6-4-1991)
 10. (Repealed by Add. 15, Amd. 1, 6-5-1991)
 11. Levy such taxes as are authorized by applicable law s. (Add. 15, Amd. 2, 6-4-1991)
 12. (Repealed by Add. 15, Amd. 1, 6-5-1991)
 13. Except as required by Federal law or State statute, appoint no officer or employee of the City to any City board or commission, other than as an ex-officio member. (Add. 24, Amd. 1, 6-3-2003)

14. (Repealed by Add. 15, Amd. 1, 6-5-1991)

SECTION 9. APPOINTMENT OF CITY MANAGER

The Council shall appoint an officer of the City who shall have the title of City Manager and shall have the powers and perform the duties provided in this Charter. No Council member shall receive such appointment during the term for which the member has been elected, nor within 1 year after the expiration of the term. (Add. 24, Amd. 1, 6-3-2003)

SECTION 10. REMOVAL OF CITY MANAGER

(Repealed by Add. 3, Amd. 1, 5-2-1967; see par. 8.1)

SECTION 11. COUNCIL NOT TO INTERFERE IN APPOINTMENTS OR REMOVALS

1. Neither the Council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the City Manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the City. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. (1959 Charter)

2. Any Council member violating the provisions of this Section, or voting for a resolution or ordinance in violation of this Section, is guilty of a misdemeanor and upon conviction thereof shall cease to be a Council member. (Add. 24, Amd. 1, 6-3-2003)

SECTION 12. VACANCIES IN COUNCIL

Except as otherwise provided in section 2 of this act¹, a vacancy on the council must be filled by appointment by a majority of the remaining members of the Council within 30 days or after three regular or special meetings, whichever is the shorter period of time. In the event of a tie vote among the remaining members of the Council, selection must be made by lot. No such appointment extends beyond the next municipal election. (Add. 19, Amd. 1, 7-16-1997)

SECTION 13. CREATION OF NEW DEPARTMENTS OR OFFICES; CHANGE OF DUTIES

The Council by ordinance may:

1. Create, change and abolish offices, departments or agencies, other than offices, departments and agencies established by this Charter.

2. Assign additional functions or duties to offices, departments or agencies established by this Charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department or agency. (1959 Charter)

SECTION 14. CITY CLERK

1. (Repealed by Add. 3, Amd. 1, 5-2-1967; see par. 8.1)

2. The City Clerk shall:

(a) Give notice of meetings of the Council.

(b) Keep the journal of the Council's proceedings and attend all meetings unless excused by the Council.

(c) Authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions.

(d) Perform such other duties as are required by this Charter or by ordinance. (1959 Charter)

3. (Repealed by Add. 9, Amd. 2, 6-5-1979; see Sec. 8.1.A)

SECTION 15. CITY ATTORNEY

1. (Repealed by Add. 3, Amd. 1, 5-2-1967; see par. 8.1)

2. The City Attorney shall be an attorney at law, admitted to practice before the supreme court of the State of Nevada, who has been in actual practice of law in the State of Nevada for at least 3 years next preceding his appointment. If practicable, the Council shall appoint an attorney who has had special training or experience in municipal corporation law.

3. The City Attorney shall:

(a) Be legal advisor of the Council and all other City officers.

(b) Prosecute all violations of City ordinances. (1959 Charter)

(c) Draft or review all contracts and other legal documents or instruments required or requested by the Council or the City Manager. (Add. 15, Amd. 2, 6-4-1991)

(d) Perform such other legal services as the Council may direct. (1959 Charter)

(e) Attend all meetings of the Council unless previously excused therefrom by three members thereof or by the Mayor or by the Mayor pro tem in the absence of the Mayor. In the event he is excused, he is to provide at his own expense substitute counsel for such meeting. (Add. 24, Amd. 1, 6-3-2003)

(f) Possess such other powers, and perform such additional duties, not in conflict with this Charter, as may be prescribed by ordinance.

4. When from any cause the City Attorney is unable to perform the duties of his office, he may, with the consent of the Council, appoint some other qualified attorney to act temporarily in his place, and whenever, in the judgment of the Council, the interests of the City require it, the Council may employ assistant or special counsel.

5. The City Attorney shall deliver all books, records, papers, documents and personal property of every description, owned by the City, to his successor in office, and the City shall provide a means of safeguarding the same. (1959 Charter)

6. (Repealed by Add. 9, Amd. 2, 6-5-1979; see par. 8.1.A)

7. (Repealed by Add. 3, Amd. 1, 5-2-1967; see par. 8.1)

SECTION 16. INDUCTION OF COUNCIL INTO OFFICE; MEETINGS OF COUNCIL

1. The City Council shall meet within ten days after each City primary election and each City general election specified in Article IX, to canvass the returns and to declare the results. All newly elected or re-elected Mayor or Council members shall be inducted into office at the next regular Council meeting following certification of the applicable City general election results. Immediately following such induction, the Mayor pro tem shall be designated as provided in Section 7. Thereafter, the Council shall meet regularly at such times as it shall set by resolution from time to time, but not less frequently than once each month. (Add. 24, Amd. 1, 6-3-2003)

A. (Repealed by Add. 15, Amd. 1, 6-4-1991)

2. It is the intent of this Charter that deliberations and actions of the Council be conducted openly. All meetings of the City Council shall be in accordance with Chapter 241 of the Nevada Revised Statutes.

3. Any emergency meeting of the City Council, as defined by Chapter 241, shall be as provided therein, and in addition:

(a) An emergency meeting may be called by the Mayor or upon written notice issued by a majority of the Council.

(b) Prior notice of such an emergency meeting shall be given to all members of the City Council. (Add. 10, Amd. 1, 6-2-1981)

SECTION 17. COUNCIL TO BE JUDGE OF QUALIFICATIONS OF ITS MEMBERS

The Council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena (subpoena)² witnesses and require the production of records, but the decision of the Council in any such case shall be subject to review by the courts.

SECTION 18. RULES OF PROCEDURE; JOURNAL

The Council shall:

1. Determine its own rules and order of business.
2. Keep a journal of its proceedings, and the journal shall be open to public inspection.

SECTION 19. COUNCIL'S POWER TO MAKE AND PASS ORDINANCES, RESOLUTIONS

1. The Council shall have the power to make and pass all ordinances, resolutions and orders, not repugnant to the Constitution of the United States or of the State of Nevada or to the provisions of this Charter, necessary for the municipal government and the management of the City affairs, for the execution of all powers vested in the City, and for making effective the provisions of this Charter. (1959 Charter)

2. The Council shall have the power to enforce obedience to its ordinances by such fines, imprisonments or other penalties as the Council may deem proper, but the punishment for any offense shall not be greater than the penalties specified for misdemeanors under applicable provisions of Nevada Revised Statutes in effect at the time such offense occurred. (Add. 14, Amd. 1, 6-6-1989)

3. The City Council may enact and enforce such local police ordinances as are not in conflict with the general laws of the State of Nevada.

4. Any offense made a misdemeanor by the laws of the State of Nevada shall also be deemed to be a misdemeanor in the City of Boulder City whenever such offense is committed within the City limits. (Add. 16, Amd. 1, 6-8-1993)

SECTION 20. VOTING ON ORDINANCES AND RESOLUTIONS

1. No ordinance or resolution shall be passed without receiving the affirmative votes of at least three members of the Council.

2. The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Council. Upon the request of any member of the Council the ayes and noes shall be taken and recorded upon any vote. All members of the Council present at any meeting shall vote, except upon matters in which they have financial interest or when they are reviewing an appeal from a decision of a City commission, before which they have appeared as an advocate for or an adversary against the decision being appealed. (Add. 12, Amd. 1, 6-4-1985)

SECTION 21. ENACTMENT OF ORDINANCES; SUBJECT MATTER, TITLES

1. No ordinance shall be passed except by bill, and when any ordinance is amended, the section or sections thereof shall be reenacted as amended, and no ordinance shall be revised or amended by reference only to its title.

2. Every ordinance, except those revising the City ordinances, shall embrace but one subject and matters necessarily connected therewith and pertaining thereto; and the subject shall be clearly indicated in the title, and in all cases where the subject of the ordinance is not so expressed in the title, the ordinance shall be void as to the matter not expressed in the title. (1959 Charter)

SECTION 22. INTRODUCTION OF ORDINANCES; NOTICE; FINAL ACTION; PUBLICATION

1. The style of ordinances must be as follows: "The City Council of Boulder City do ordain". All proposed ordinances, when first proposed, must be read by title to the City Council and may be referred to a committee of any number of the members of the Council for consideration, after which an adequate number of copies of the ordinance must be deposited with the City Clerk for public examination and distribution upon request. Notice of the deposit of the copies, together with an adequate summary of the ordinance, must be published once in a newspaper published in the City, if any, otherwise in some newspaper published in the county which has a general circulation in the City, at least 10 days before the adoption of the ordinance. At any meeting at which final action on the ordinance is considered, at least one copy of the ordinance must be available for public examination. The City Council shall adopt or reject the ordinance, or the ordinance as amended, within 30 days after the date of publication, except that in cases of emergency, by unanimous consent of the whole Council, final action may be taken immediately or at a special meeting called for that purpose.

2. At the next regular or adjourned meeting of the Council following the proposal of an ordinance and its reference to committee, the committee shall report the ordinance back to the Council, and thereafter it must be read by title and summary or in full as first introduced, or if amended, as amended, and thereupon the proposed ordinance must be finally voted upon or action on it postponed.

3. After final adoption the ordinance must be signed by the mayor, and, together with the votes cast on it, must be:

(a) Published by title, together with an adequate summary including any amendments, once in a newspaper published in the City, if any, otherwise in a newspaper published in the county and having a general circulation in the City; and

(b) Posted in full in the City hall.

4. Except as provided in subsections 5 and 6, all ordinances become effective 20 days after publication.

5. Emergency ordinances having for their purpose the immediate preservation of the public peace, health or safety, containing a declaration of and the facts constituting its urgency and passed by a four-fifths vote of the Council, and ordinances calling or otherwise relating to a municipal election, become effective on the date specified therein.

6. All ordinances having for their purpose the lease or sale of real estate owned by the City (except City-owned subdivision or cemetery lots) may be effective not fewer than 5 days after the

publication. (Add. 14, Amd. 2, 6-6-1989)

SECTION 23. ADOPTION OF SPECIALIZED, UNIFORM CODES

An ordinance adopting any specialized or uniform building, plumbing or electrical code or codes, printed in book or pamphlet form or any other specialized or uniform code or codes of any nature whatsoever so printed, may adopt such code, or any portion thereof, with such changes as may be necessary to make the same applicable to conditions in the City, and with such other changes as may be desirable, by reference thereto, without the necessity of reading the same at length as provided in Section 22. Such code, upon adoption, need not be published as required by Section 22 if an adequate number of copies of such code, either typewritten or printed, with such changes, if any, have been filed for use and examination by the public in the office of the City Clerk at least one week prior to the passage of the ordinance adopting the code, or any amendment thereto. Notice of such filing shall be given in accordance with the provisions of Section 22.3. (Add. 8, Amd. 9, 6-7-1977)

SECTION 24. CODIFICATION OF ORDINANCES; PUBLICATION OF CODE

1. The Council shall have the power to codify and publish a code of its municipal ordinances in the form of municipal code, which code may, at the election of the Council, have incorporated therein a copy of this Charter and such additional data as the Council may prescribe.
2. The ordinances in the code shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, attestations and other formal parts.
3. The codification shall be adopted by an ordinance which shall not contain any substantive changes, modifications or alterations of existing ordinances and the only title necessary for the ordinance shall be "An ordinance for codifying and compiling the general ordinances of Boulder City".
4. The codification may, by ordinance regularly passed, adopted and published, be amended or extended.

SECTION 25. INDEPENDENT ANNUAL AUDIT

Prior to the end of each fiscal year the Council shall designate qualified accountants who, as of the end of the fiscal year, shall make a complete and independent audit of accounts and other evidences of financial transactions of the City government and shall submit their report to the Council and to the City Manager. Such accountants shall have no personal interest, direct or indirect, in the fiscal affairs of the City government or of any of its officers. They shall not maintain any accounts or records of the City business, but, within specifications approved by the Council, shall post-audit the books and documents kept by the department of finance and any separate or subordinate accounts kept by any other office, department or agency of the City government.

ARTICLE III

THE CITY MANAGER

- 26. City Manager; Qualifications
- 27. City Manager; Salary (Repealed by Add 9, Amd. 2, 6-5-1979)
- 28. City Manager; Powers and Duties
- 29. Absence of City Manager
- 30. Administrative Departments; Directors and Departmental Divisions

SECTION 26. CITY MANAGER; QUALIFICATIONS

1. The City Manager shall be chosen by the Council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter set forth.
2. At the time of his appointment, the City Manager need not be a resident of the City or State, but during his tenure of office he shall reside within the City.

SECTION 27. CITY MANAGER; SALARY

(Repealed by Add 9, Amd. 2, 6-5-1979; see. Sec. 8.1.A)

SECTION 28. CITY MANAGER; POWERS AND DUTIES

The City Manager shall be the chief executive officer and the head of the administrative branch of the City government. He shall be responsible to the Council for the proper administration of all affairs of the City and to that end, subject to the civil service provisions of this Charter, he shall have the power and shall be required to: (1959 Charter)

1. Appoint (and remove when necessary for the good of the City) all officers and employees of the City except those who are to be appointed and removed by the Council under the provisions of Section 8. The City Manager may authorize the head of any department or office to appoint and remove subordinate employees of such department or office. All appointments and removals must be made pursuant to the provisions of this Charter and applicable ordinances. (Add. 15, Amd. 2, 6-4-1991)
2. Prepare the budget annually and submit it to the Council and be responsible for its administration after adoption. (1959 Charter)
3. Prepare and submit to the Council as of the end of each fiscal year a complete report of the finances and administrative activities of the City for the fiscal year. (Add. 11, Amd. 2, 6-7-1983)
4. Keep the Council advised of the financial condition and future needs of the City and make such recommendations as may seem to him desirable.
5. Perform such other duties as may be prescribed by this Charter or required of him by the Council,

not inconsistent with this Charter.

6. Be bonded, the amount to be determined by the Council.

SECTION 29. ABSENCE OF CITY MANAGER

To perform his duties during his temporary absence or disability, the City Manager may designate by letter filed with the City Clerk a qualified administrative officer of the City. In the event of failure of the City Manager to make such designation, the Council may by resolution appoint an officer of the City to perform the duties of the City Manager until he shall return or his disability shall cease.

SECTION 30. ADMINISTRATIVE DEPARTMENTS; DIRECTORS AND DEPARTMENTAL DIVISIONS

1. There shall be such administrative departments as may be established by ordinance.

2. At the head of each department there shall be a director, who shall be an officer of the City and shall have supervision and control of the department subject to the City Manager. Two or more departments may be headed by the same individual; the City Manager may head one or more departments, and directors of departments may also serve as chiefs of divisions.

3. The work of each department may be distributed among such divisions thereof as may be established by ordinance upon the recommendation of the City Manager. Pending the passage of an ordinance or ordinances distributing the work of departments under the supervision and control of the City Manager among specific divisions thereof, the City Manager may establish temporary divisions. (1959 Charter)

ARTICLE IV CITY BUDGETS

Section 31. Budgets

SECTION 31. BUDGETS

Budgets for the City shall be prepared in accordance with and shall be governed by the provisions of the general laws of the State pertaining to budgets of cities. (Add. 11, Amd. 3, 6-7-1983)

ARTICLE V PUBLIC IMPROVEMENTS AND REPAIRS

Section 32. Expense of Improvements; Payment by Funds or by Special Assessments

33.- 55. (Reserved for Expansion)

SECTION 32. EXPENSES OF IMPROVEMENTS; PAYMENT BY FUNDS OR BY SPECIAL ASSESSMENTS

The expenses of public improvements and repairs, such as the improvement of streets and alleys by grading, paving, graveling, curbing, the construction, repair, maintenance and preservation of sidewalks, drains, curbs, gutters, storm sewers, drainage systems, sewerage systems and sewerage disposal plants, may be paid from the general fund or street fund or the cost or portion thereof as the Council shall determine, may be defrayed by special assessments upon lots and premises abutting upon that part of the street or alley so improved or proposed so to be, or the land abutting upon such improvement and such other lands as in the opinion of the Council may benefit by the improvement all in the manner contained in the provisions of the Nevada Revised Statutes. (Add. 3, Amd. 4, 5-2-1967)

SECTIONS 33.-55. (Reserved for expansion)

ARTICLE VI**CITY ASSESSOR; TAX RECEIVER; FINANCES AND PURCHASING**

- 56. Clark County Assessor to be Ex-Officio City Assessor
- 57. Clark County Treasurer to be Ex-Officio City Tax Receiver
- 58. Director of Finance; Appointment
- 59. Director of Finance; Qualification
- 60. Director of Finance; Salary
- 61. Director of Finance; Bond
- 62. Director of Finance; Powers and Duties
- 62.5 Procedures for City Purchasing
- 63. Work Program Allotments (Repealed by Add. 11, Amd. 4, 6-7-1983)
- 64. Allotments Constitute Basis of Expenditures and are Subject to Revision (Repealed by Add. 11, Amd. 4, 6-7-1983)
- 65. Transfer of Appropriations
- 66. Accounting Supervision and Control
- 67. When Contracts and Expenditures Prohibited

SECTION 56. CLARK COUNTY ASSESSOR TO BE EX-OFFICIO CITY ASSESSOR

The county assessor of Clark County shall, in addition to the duties now imposed upon him by law, act as the assessor of the City and shall be ex-officio City assessor, without further compensation. He shall perform such duties as the Council may by ordinance prescribe.

SECTION 57. CLARK COUNTY TREASURER TO BE EX-OFFICIO CITY TAX RECEIVER

The county treasurer of Clark County shall, in addition to the duties now imposed upon him by law, act as ex-officio City tax receiver. He shall receive and safely keep all moneys that come to the City by taxation, and shall pay the same to the director of finance. The City tax receiver may, with the consent of the Council, collect special assessments which may be levied by authority of this Charter, or City ordinance, when they become due and payable, and whenever and wherever the general laws of the State of Nevada regarding the authorized acts of tax receivers may be, the same hereby are, made applicable to the City tax receiver of Boulder City, in the collection of City special assessments. (1959 Charter)

SECTION 58. DIRECTOR OF FINANCE; APPOINTMENT

There may be a department of finance, the head of which shall be the director of finance, who shall be, or be appointed by, the City Manager, with the concurrence of a majority of the Council, and whose duties hereinafter set forth shall be subject to the supervision and control of the City Manager. (Add. 2, Amd. 2, 5-4-1965)

SECTION 59. DIRECTOR OF FINANCE; QUALIFICATION

The director of finance shall have knowledge of municipal accounting and taxation and shall have had experience in budgeting and financial control. (1959 Charter)

SECTION 60. DIRECTOR OF FINANCE; SALARY

The director of finance, if other than the City Manager, shall receive a salary as prescribed by resolution of the City Council. (Add. 9, Amd. 2, 6-5-1979)

SECTION 61. DIRECTOR OF FINANCE; BOND

The director of finance, if other than the City Manager, shall provide a bond with such surety and in such amount as the Council may require by ordinance.

SECTION 62. DIRECTOR OF FINANCE; POWERS AND DUTIES

The director of finance shall have charge of the administration of the financial affairs of the City and to that end he shall have authority and shall be required to:

1. Compile the current expense estimates for the budget for the City Manager.
2. Compile the capital estimates for the budget for the City Manager.
3. Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to ensure that budget appropriations are not exceeded.

4. Maintain a general accounting system for the City government and each of its offices, departments and agencies; keep books for and exercise financial budgetary control over each office, department and agency; keep separate accounts for the items of appropriation contained in the City budget, each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it and the unencumbered balance; require reports of receipts and disbursements from each receiving and spending agency of the City government to be made daily.
5. Submit to the Council through the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City.
6. Prepare for the City Manager, as of the end of each fiscal year, a complete financial statement and report.
7. Collect all license fees and other revenues of the City (except taxes and authorized assessments) for whose collection the City is responsible and receive all money receivable by the City from the State or Federal Government, or from any court, or from any office, department or agency of the City.
8. Have custody of all public funds belonging to or under the control of the City, or any office, department or agency of the City government, and deposit all funds coming into his hands in such depositories as may be designated by resolution of the Council, or, if no such resolution is adopted, by the City Manager, subject to the requirements of law as to surety and the payment of interest on deposits; but all such interest shall be the property of the City and shall be accounted for and credited to the proper account.
9. Have custody of all investments and invested funds of the City government, or in possession of such government in a fiduciary capacity and have the safekeeping of all bonds and notes of the City and the receipt and delivery of City bonds and notes for transfer, registration or exchange.
10. Consistent with the provisions of Section 62.5, supervise and be responsible for the purchase of all supplies, materials, equipment and other articles used by any office, department or agency of the City government.
11. Approve all proposed expenditures; and unless he certifies that there is an unencumbered balance of appropriation and available funds, no appropriation shall be encumbered and no expenditure shall be made. (1959 Charter)

SECTION 62.5. PROCEDURES FOR CITY PURCHASING

1. All purchases of goods or services of every kind or description for the City by any office, commission, board, department or any division thereof shall be made in conformance with the Nevada Revised Statutes, as amended from time to time. (Add. 5, Amd. 3, 6-8-1971)

SECTION 63. WORK PROGRAM ALLOTMENTS

(Repealed by Add. 11, Amd. 4, 6-7-1983)

SECTION 64. ALLOTMENTS CONSTITUTE BASIS OF EXPENDITURES AND ARE SUBJECT TO REVISION

(Repealed by Add. 11, Amd. 4, 6-7-1983)

SECTION 65. TRANSFER OF APPROPRIATIONS

The City Manager may at any time transfer any unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department or agency.

SECTION 66. ACCOUNTING SUPERVISION AND CONTROL

The director of finance shall have power and shall be required to:

1. Prescribe the forms of receipts, vouchers, bills or claims to be used by all the offices, departments and agencies of the City government. (1959 Charter)
2. Except as otherwise provided in this Charter, examine and approve all contracts, orders and other documents by which the City government incurs financial obligations, having previously ascertained that moneys have been appropriated and will be available when the obligations become due and payable.
3. Examine and approve before payment all bills, invoices, payrolls and other evidences of claims, demands or charges against the City government and with the advice of the City Attorney determine the regularity, legality and correctness of such claims, demands or charges.
4. Inspect any accounts or records of financial transactions which may be maintained in any office, department or agency of the City government apart from or subsidiary to the accounts kept in his office. (Add. 24, Amd. 1, 6-3-2003)

SECTION 67. WHEN CONTRACTS AND EXPENDITURES PROHIBITED

1. No officer, department or agency shall, during any budget year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, for any purpose, in excess of the amounts appropriated for that general classification of expenditure pursuant to this Charter. Any contract, verbal or written, made in violation of this Charter shall be null and void. Any officer or employee of the City who violates this Section shall be guilty of a misdemeanor and, upon conviction thereof, shall cease to hold his office or employment.
2. Nothing in this Section shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for services for a period exceeding the budget year in which such contract is made, when such contract is permitted by law. (1959 Charter)

ARTICLE VII
CIVIL SERVICE AND PERSONNEL

- 68. Civil Service Commission; Creation; Members; Terms;
Qualifications and Compensation
- 69. Commission Rules and Regulations
- 70. Procedure for Amendment, Modification of Rules and
Regulations

SECTION 68. CIVIL SERVICE COMMISSION; CREATION; MEMBERS; TERMS; QUALIFICATIONS AND
COMPENSATION

1. There shall be a civil service commission of Boulder City.
2. The civil service commission shall consist of three citizens, not more than two of whom shall at any time belong to the same political party.
3. The Council shall appoint the members of a civil service commission for a term of three (3) years, the terms to be staggered.
4. Every person appointed a member of the commission shall, before entering upon the duties of his office, take and subscribe the oath of the office prescribed by this Charter, and file same, certified by the officer administering it, with the City Clerk. (1959 Charter)
5. No person shall be eligible for appointment as a member of the commission, and no person shall continue as a member of the commission, unless he shall be a resident of Boulder City, who shall otherwise have no connection with the City government and who shall hold no elective office. (Add. 10, Amd. 3, 6-2-1981)
6. Vacancies on the civil service commission from whatever cause shall be filled by appointment by the Council.
7. The City Manager shall provide for such employees as shall be necessary to enable the civil service commission to carry out properly the duties prescribed herein.
8. The members of the civil service commission shall receive no compensation for their services.
9. A member of the civil service commission may be removed from office for cause by a majority vote of the Council.

SECTION 69. COMMISSION RULES AND REGULATIONS

1. The Commission shall prepare and adopt rules and regulations to govern the selection and appointment of all employees of the City within the provisions of this article and such rules and regulations shall be designed to secure the best service for the public.
2. Such rules and regulations shall provide for ascertaining, as far as possible, the physical

qualifications, the habits, and the reputation and standing and experience of all applicants for positions, and they may provide for competitive examinations of some or all in such subjects as shall be deemed proper for the purpose of best determining their qualifications and fitness for the position sought. The Civil Service rules and regulations shall apply to all employees of the City, but shall not apply to any individual in any of the following categories:

(a) Appointed City officers, including the City Manager, City Attorney, City Clerk and Municipal Judge.

(b) Heads of Departments and their immediate subordinates as established by this Charter or by ordinance. (Add. 10, Amd. 4, 6-2-1981)

3. Such rules and regulations may:

(a) Provide for the classification of positions in the service and for a special course of inquiry and examination for candidates of each class.

(b) Provide for disciplinary, suspension, demotion and dismissal proceedings and shall further govern promotions and advancements.

(c) Further classify, in accordance with duties and salaries, all offices and positions within the provisions of this article.

4. The commission shall, by rule, provide for a probationary period.

5. The commission shall establish the procedures by which an employee may appeal a disciplinary action to the commission. (Add. 2, Amd. 3, 5-4-1965)

6. All commission rules and regulations and all changes therein shall be subject to review and approval by the City Council. A copy of all rules and regulations made by the commission and all changes therein shall be filed in the office of the City Clerk. (Add. 8, Amd. 3, 6-7-1977)

7. The commission shall cause the rules and regulations so prepared and adopted, and all changes therein, to be printed or otherwise reproduced and distributed as the commission shall deem necessary, and the expense thereof shall be certified by the commission, and shall be paid by the City.

8. All selections of persons for employment or appointment or promotion, in any department of the City within the provisions of this article, shall be made in accordance with such rules and regulations.

SECTION 70. PROCEDURE FOR AMENDMENT, MODIFICATION OF RULES AND REGULATIONS

After commission rules and regulations have been adopted, they shall be amended or modified by the commission only after the commission shall have caused a notice containing the proposed amendment or modification and specifying a time certain when the commission will meet and hear objections to the adoption of such proposed amendment or modification. Such notice shall be given to the Council, the City Manager and to the head of each department affected by such amendment or modification and be posted on the bulletin board or in a conspicuous place accessible to the

employees in each department affected by such proposed amendment or modification not less than ten (10) days before the date of such meeting. (Add. 2, Amd. 3, 5-4-1965)

ARTICLE VIII PLANNING AND ZONING

- 90. Planning Commission; Creation by Ordinance
- 91. Tentative Zoning Map, Ordinance; Land Use Plan
(Repealed by Add. 24, Amd. 1, 6-3-2003)
- 92. Public Parks, Recreation Areas, Parking
- 93. Areas for Schools, Playgrounds, Public Uses
- 94. Areas for Parks (Repealed by Add. 24, Amd. 1, 6-3-2003)
- 95. Plans for Future Projects

SECTION 90. PLANNING COMMISSION; CREATION BY ORDINANCE

The Council shall create by ordinance a planning commission in accordance with the provisions of general law. Such planning commission shall have all of the powers and duties enumerated in such law.

SECTION 91. TENTATIVE ZONING MAP, ORDINANCE; LAND USE PLAN

(Repealed by Add. 24, Amd. 1, 6-3-2003)

SECTION 92. PUBLIC PARKS, RECREATION AREAS, PARKING

1. All public parks, public recreation areas and publicly owned off-street parking areas in existence at the time of incorporation, unless under private lease, must not be sold, leased or zoned for any other use without approval of the majority of the voters voting at a special election or general Municipal election or general State election. (Add. 24, Amd. 1, 6-3-2003)

2. A special election may be held only if the City Council determines, by a unanimous vote, that an emergency exists. The determination made by the City Council is conclusive unless it is shown that the City Council acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the City Council must be commenced within 15 days after the City Council's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the City Council to prevent or mitigate a substantial financial loss to the City or to enable the City Council to provide an essential service to the residents of the City. (Add. 16, Amd. 2, 1-1-1994)

SECTION 93. AREAS FOR SCHOOLS, PLAYGROUNDS, PUBLIC USES

Additional lands shall be withheld and reserved for other public use such as fire stations, power stations and off-street parking. (1959 Charter; Add. 24, Amd. 1, 6-3-2003)

SECTION 94. AREAS FOR PARKS

(Repealed by Add. 24, Amd. 1, 6-3-2003)

SECTION 95. PLANS FOR FUTURE PROJECTS

The City Manager shall submit annually to the City Council, not less than six (6) months prior to the beginning of the fiscal year, a list of recommended capital improvements which are necessary or desirable for the forthcoming four (4) year period. (Add. 10, Amd. 5, 6-2-1981)

ARTICLE IX CITY ELECTIONS

Section 96. Conduct of Municipal Elections

- 97. Conduct of Elections (Repealed by Add. 24, Amd. 1, 6-3-2003)
- 98. Election of Councilmen (Repealed by Add. 9, Amd. 3, 6-5-1979)
- 99. (Reserved for Expansion) (Add. 5, Amd. 4, 6-8-1971)

SECTION 96. CONDUCT OF MUNICIPAL ELECTIONS

1. All municipal elections must be nonpartisan in character and must be conducted in accordance with the provisions of the general election laws of the State of Nevada and any ordinance regulations as adopted by the City Council which are consistent with law and this Charter.
2. All full terms of office in the City Council are 4 years, and Council Members must be elected at large without regard to precinct residency. Except as otherwise provided in subsection 8, two full-term Council Members and the Mayor are to be elected in each year immediately preceding a federal presidential election, and two full-term Council Members are to be elected in each year immediately following a federal presidential election. In each election, the candidates receiving the greatest number of votes must be declared elected to the vacant full-term positions.
3. In the event one or more 2-year term positions on the Council will be available at the time of a municipal election as provided in section 12, candidates must file specifically for such position(s). Candidates receiving the greatest respective number of votes must be declared elected to the respective available 2-year positions.
4. Except as otherwise provided in subsection 8, a primary municipal election must be held on the first Tuesday after the first Monday in April of each odd-numbered year and a general municipal election must be held on the second Tuesday after the first Monday in June of each odd-numbered

year.

5. A primary municipal election must not be held if no more than double the number of Council Members to be elected file as candidates. A primary municipal election must not be held for the office of Mayor if no more than two candidates file for that position. The primary municipal election must be held for the purpose of eliminating candidates in excess of a figure double the number of Council Members to be elected.

6. If, in the primary municipal election, a candidate receives votes equal to a majority of voters casting ballots in that election, he or she shall be considered elected to one of the vacancies and his or her name shall not be placed on the ballot for the general municipal election.

7. In each primary and general municipal election, voters are entitled to cast ballots for candidates in a number equal to the number of seats to be filled in the municipal elections.

8. The City Council may by ordinance provide for a primary municipal election and general municipal election on the dates set forth for primary elections and general elections pursuant to the provisions of chapter 293 of NRS.

9. If the City Council adopts an ordinance pursuant to subsection 8, the dates set forth in NRS 293.12755, in subsections 2 to 5, inclusive, of NRS 293.165 and in NRS 293.175, 293.177, 293.345 and 293.368 apply for the purposes of conducting the primary municipal elections and general municipal elections.

10. If the City Council adopts an ordinance pursuant to subsection 8, the ordinance must not affect the term of office of any elected official of the City serving in office on the effective date of the ordinance. The next succeeding term for that office may be shortened but may not be lengthened as a result of the ordinance.

11. The conduct of all municipal elections must be under the control of the City Council, which shall adopt by ordinance all regulations which it considers desirable and consistent with law and this Charter. Nothing in this Charter shall be construed as to deny or abridge the power of the City Council to provide for supplemental regulations for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud. (Add. 30, Amd. 1, 2015)

SECTION 97. CONDUCT OF ELECTIONS

(Repealed by Add. 24, Amd. 1, 6-3-2003)

SECTION 98. ELECTION OF COUNCILMEN

(Repealed by Add. 9, Amd. 3, 6-5-1979)

SECTION 99. (Reserved for expansion)

(Add. 5, Amd. 4, 6-8-1971)

ARTICLE X
INITIATIVE, REFERENDUM AND RECALL

Section 100. Registered Voters' Power of Initiative and Referendum
Concerning City Ordinances

- 101. Initiative And Referendum Proceedings
- 102. Results of Election
- 103. Repealing Ordinances; Publication
- 104.-110. (Reserved for Future Expansion)
- 111.5. Recall of the Mayor and Council Members

SECTION 100. REGISTERED VOTERS' POWER OF INITIATIVE AND REFERENDUM CONCERNING CITY
ORDINANCES

The registered voters of a City may:

1. Propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without change in substance, to adopt or reject it at a primary or general Municipal election or primary or general State election.
2. Require reconsideration by the Council of any adopted ordinance, and if the Council fails to repeal an ordinance so considered, to approve or reject it at a primary or general Municipal election or primary or general State election. (Add. 16, Amd. 2, 1-1-1994)

SECTION 101. INITIATIVE AND REFERENDUM PROCEEDINGS

1. All initiative and referendum proceedings shall be conducted in conformance with the provisions of the Nevada Revised Statutes, as amended from time to time.

SECTION 102. RESULTS OF ELECTION

1. If a majority of the registered voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the results of the election and must be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes prevails to the extent of the conflict.
2. If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the results of the election.
3. No initiative ordinance voted upon by the registered voters or an initiative ordinance in substantially the same form as one voted upon by the people, may again be placed on the ballot until the next primary or general Municipal election or primary or general State election. (Add. 16, Amd. 2, 1-1-1994)

SECTION 103. REPEALING ORDINANCES; PUBLICATION

Initiative and referendum ordinances adopted or approved by the voters may be published, and shall not be amended or repealed by the Council, as in the case of other ordinances.

SECTIONS 104.-110. (Reserved for future expansion)

SECTION 111.5. RECALL OF THE MAYOR AND COUNCIL MEMBERS

As provided by the general laws of this State, the Mayor and every member of the City Council are subject to recall from office. (Add. 29, Amd. 3, 2011)

ARTICLE XI GENERAL PROVISIONS

- 112. Removal of Officers and Employees
- 113. Right of City Manager and Other Officers in Council
- 114. Investigations by Council or City Manager
- 115. Publicity of Records (Repealed by Add. 12, Amd. 3, 6-4-1985)
- 116. Personal Interest
- 117. Official Bonds
- 118. Oath of Office
- 119. Amending the Charter
- 120. Short Title; Citation of Boulder City Act of 1958
- 121. Construction of Charter; Separability of Provisions

SECTION 112. REMOVAL OF OFFICERS AND EMPLOYEES

Subject to the provisions of Section 8.1.B and Article VII, any employee of the City may be suspended or dismissed from employment at any time by the City Manager or by any applicable person appointed by the City Manager pursuant to Section 28. Unless otherwise provided in this Charter, any such action shall be considered final and conclusive, and shall not be subject to appeal to any City government entity. (Add. 15, Amd. 2, 6-4-1991)

SECTION 113. RIGHT OF CITY MANAGER AND OTHER OFFICERS IN COUNCIL

The City Manager shall have the right to take part in the discussion of all matters coming before the Council, and the directors and other officers shall be entitled to take part in all discussions of the Council relating to their respective offices, departments or agencies. (Add. 24, Amd. 1, 6-3-2003)

SECTION 114. INVESTIGATIONS BY COUNCIL OR CITY MANAGER

The Council shall have power to inquire into the conduct of any office, department, agency or officer of the City and to make investigations as to Municipal affairs, and for that purpose may cause witnesses to be subpoenaed (subpoenaed)³, oaths to be administered, and compel the production of books, papers and other evidence. Failure to obey such subpoena (subpoena)⁴ or to produce books, papers or other evidence as ordered under the provisions of this Section shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$500 or by imprisonment not to exceed 6 months, or both fine and imprisonment.

SECTION 115. PUBLICITY OF RECORDS

(Repealed by Add. 12, Amd. 3, 6-4-1985)

SECTION 116. PERSONAL INTEREST

1. No elective or appointive officer shall take any official action on any contract or other matter in which he has any financial interest. (1959 Charter)
2. Violation of the provisions of this Section shall constitute a misdemeanor, subject to a penalty not to exceed the penalties specified for misdemeanors under applicable provisions of Nevada Revised Statutes in effect at the time of such violation. (Add. 15, Amd. 2, 6-4-1991)

SECTION 117. OFFICIAL BONDS

Officers or employees as the Council may by general ordinance require so to do shall give bond in such amount and with such surety as may be approved by the Council. The premiums on such bonds shall be paid by the City. (Add. 24, Amd. 1, 6-3-2003)

SECTION 118. OATH OF OFFICE

Every officer of the City shall, before entering upon the duties of his office, take and subscribe to the official oath of office of the State of Nevada:

"I, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any Ordinance, Resolution or Law of any State notwithstanding, and I will well and faithfully perform all the duties of the office of on which I am about to enter; (if any oath) so help me God; (if any affirmation) under the pains and penalties of perjury."

(1959 Charter)

SECTION 119. AMENDING THE CHARTER

1. An amendment to this Charter:

A. May be made by the legislature directly by the use of mandatory specific wording or indirectly by the use of wording allowing flexibility in expressing the required change.

(1) If a statute is enacted which directly amends this Charter, such an amendment is not subject to public approval as provided in Subsection B and must be included in the Charter and identified as having been amended by the particular statute involved.

(2) If a statute is enacted which requires that this Charter be amended but does not require the specific wording to be used, the City Council shall propose a suitable amendment to be submitted to the registered voters of the City as provided in Subsection B. If such a proposed amendment is not adopted by the voters, it must be redrafted and resubmitted to the voters at one or more general City elections or general State elections until an amendment is adopted.

B. May be proposed by the City Council and submitted to the registered voters of the City at a general City election or general State election.

C. May be proposed by a petition signed by registered voters of the City equal in number to 15 percent or more of the voters who voted at the latest preceding general City election and submitted to registered voters of the City at the next general City election or general State election.

2. The City Attorney shall draft any amendment proposed pursuant to Subsections A(2) or B, or if such a proposed amendment has been previously drafted, the City Attorney shall review the previous draft and recommend to the Council any suggested changes or corrections.

3. The City Attorney shall, upon request, review any amendment intended to be proposed by petition pursuant to Subsection C, make only such corrections as are agreed to by the proposers and report to the City Council his analysis of the significance and potential effects of the proposed amendment.

4. A petition for amendment must be in the form specified by State law for City initiative petitions, and must be filed with the City Clerk not later than 6 months before the date of the general City election or general State election at which the proposed amendment is to be submitted to the voters of the City.

5. When an amendment is adopted by the registered voters of the City, the City Clerk shall, within 30 days thereafter, transmit a certified copy of the amendment to the legislative counsel.

6. Any amendment to the Charter proposed under the provisions of this Section shall be adopted by a simple majority of the voters casting ballots on that question at two consecutive general elections before any such amendment shall become effective. (Add. 25, Amd. 1, 6-3-2003)

SECTION 120. SHORT TITLE; CITATION OF BOULDER CITY ACT OF 1958

1. This Charter shall be known and may be cited as the Boulder City Charter.
2. Whenever used in this Charter, the words "the Boulder City Act of 1958" will mean Public Law 85-900, 85th Congress, September 2, 1958, also designated as 72 stat. 1726 to 1735, inclusive. (1959 Charter)
3. (Repealed by Add. 10, Amd. 3, 6-2-1981)

SECTION 121. CONSTRUCTION OF CHARTER; SEPARABILITY OF PROVISIONS

1. The descriptive headings or catch lines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catch lines immediately preceding the text of such sections, do not constitute part of the Charter.
2. Whenever any reference is made to any portion of the Nevada Revised Statutes or of any other law of the State or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.
3. The City hereby agrees to be governed by the provisions of the Boulder City Act of 1958. In the event of any conflict, ambiguity or inconsistency between any provision of this Charter and the provisions of the Boulder City Act of 1958, the provisions of the Boulder City Act of 1958 shall control.
4. If any section or part of section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

ARTICLE XII MUNICIPAL COURT

122. Municipal Court Created; Power
123. Municipal Judge; Bond
124. Municipal Judge; Appointment; Salary (Repealed by Add. 3, Amd. 1, 5-2-1967)
125. Powers of Municipal Court (Repealed by Add. 13, Amd. 5, 6-2-1987)
126. Appeals to District Court (Repealed by Add. 13, Amd. 5, 6-2-1987)

SECTION 122. MUNICIPAL COURT CREATED; POWER

There is hereby created and established in and for Boulder City, a municipal court, which is vested with the judicial power of the City for municipal purposes. (1959 Charter)

SECTION 123. MUNICIPAL JUDGE; BOND

The municipal judge shall, before entering upon the discharge of his duties, make and execute to the City a good and sufficient bond in such sum and condition as the Council may prescribe. (Add. 13, Amd. 4, 6-2-1987)

SECTION 124. MUNICIPAL JUDGE; APPOINTMENT; SALARY

(Repealed by Add 3, Amd. 1, 5-2-1967; see par. 8.1)

SECTION 125. POWERS OF MUNICIPAL COURT

(Repealed by Add. 13, Amd. 5, 6-2-1987)

SECTION 126. APPEALS TO DISTRICT COURT

(Repealed by Add. 13, Amd. 5, 6-2-1987)

ARTICLE XIII

INTOXICATING LIQUORS, GAMBLING AND PROSTITUTION

126.5 Applicability of Boulder City Act of 1958

(Repealed by Add. 3, Amd. 5, 5-2-1967)

127. Sale of Intoxicating Liquors

128. Gambling Prohibited

129. Pandering, Prostitution and Disorderly Houses

Prohibited

SECTION 126.5 APPLICABILITY OF THE BOULDER CITY ACT OF 1958

(Section 126.5 and Sec. 10 of B.C. Act of 1958 re Deed Restrictions repealed by Add. 3, Amd. 5, 5-2-1967)

SECTION 127. SALE OF INTOXICATING LIQUORS

1. The sale of intoxicating liquors shall be authorized by the City Council of Boulder City, Nevada, in accordance with and within the limitations of the laws of the Federal Government and the State of Nevada.

2. All provisions or portions of provisions of the Boulder City Charter conflicting with the provisions of this amendment are hereby repealed. (Add. 4, Amd. 5, 5-6-1969)

SECTION 128. GAMBLING PROHIBITED

1. No game, slot machine, pinball machine or gambling device shall be conducted, maintained or operated within the City.

2. For the purpose of this Charter the terms "game", "games" or "devices" shall be construed to mean and include all games, devices or activities, and any slot machine or pinball machine played for money, or for checks, or tokens redeemable in money or property, and shall be given such general application as to include every activity whereby a person risks money or other things of value on a contest or chance of any kind. (1959 Charter)

3. Nothing in this Section shall be construed to prohibit social games played in private homes or residences or to prohibit the City Council from granting special event permits, in accordance with procedures which the City Council shall prescribe by ordinance, to bona fide religious, nonprofit, charitable, fraternal, or similar corporations, to conduct activities on a limited basis to raise funds for the purpose of financing activities for which such organization is founded. (Add. 3, Amd. 7, 5-2-1967)

4. Any person violating the provisions of this Section is guilty of a misdemeanor.

SECTION 129. PANDERING, PROSTITUTION AND DISORDERLY HOUSES PROHIBITED

1. Pandering, prostitution and disorderly houses, as defined and made unlawful by the general laws of the State, shall be unlawful within the City.

2. The Council shall enact such ordinances as may be necessary to implement this Section.

ARTICLE XIV PUBLIC UTILITIES

- 130. Granting of Franchises
- 131. Conditions and Transfer of Franchises
- 132. Rates; Annual Cost of Service and Sliding Scale
Basis
- 133. Records and Proceedings
- 134. Condemnation
- 135. Establishment of Municipally Owned and Operated
Utilities
- 136. Municipal Utility Organizations
- 137. Financial Provisions
- 138. Sale of Public Utilities; Proviso

SECTION 130. GRANTING OF FRANCHISES

The City shall have power to grant a franchise to any private corporation for the use of streets and other public places in the furnishing of any public utility service to the City and to its inhabitants. All franchises and any renewals, extensions and amendments thereto shall be granted only by ordinance. A proposed franchise ordinance shall be submitted to the City Manager, and he shall render to the Council a written report containing recommendations thereon. The City shall have the power as one of the conditions of granting any franchise, to impose a franchise tax, either for the purpose of license or for revenue.

SECTION 131. CONDITIONS AND TRANSFER OF FRANCHISES

1. Every franchise or renewal, extension or amendment of a franchise hereafter granted shall:

(a) Impose upon the utility the duty to furnish proper service at minimum attainable cost under proper organization and efficient management. The City may issue such orders with respect to safety and other matters as may be necessary or desirable for the community.

(b) Reserve to the City the right to make all future regulations or ordinances deemed necessary for the preservation of the health, safety and public welfare of the City, including, but not limited to, regulations concerning the imposition of uniform codes upon the utilities, standards and rules concerning the excavations and use to which the streets, alleys and public thoroughfares may be put, and regulations concerning placement of easement improvements such as poles, valves, hydrants and the like.

2. No franchise shall be transferred hereafter by any utility to another without the approval of the Council, and as a condition to such approval, the successor in interest to the said franchise shall execute a written agreement containing a covenant that it will comply with all the terms and conditions of the franchise then in existence, together with any other terms, conditions and regulations and ordinances which the City, or its agencies, may wish to impose.

SECTION 132. RATES; ANNUAL COST OF SERVICE AND SLIDING SCALE BASIS

The Council shall enact proper ordinances and shall prosecute or cause to be prosecuted all appropriate proceedings before the Public Service Commission of Nevada to secure fair rates for consumers at large and for the City.

SECTION 133. RECORDS AND PROCEEDINGS

1. The Council shall establish or designate an agency of the City government which shall assemble the facts which are essential to proper determination of cost of service and the fixing of reasonable rates. Such agency shall have and keep up to date an inventory of the property used in public service, the cost of such properties as actually and reasonably incurred or as fixed by appraisal additions and retirements made each year, the depreciation, and all matters that enter into the periodical readjustment of the rate base. It shall have power to make, and shall conduct, all

inspections and examinations of public utility properties accounts and records necessary or appropriate to carry out the provisions of this Charter. At the close of each calendar or fiscal year, it shall make a comprehensive report and recommendations to the City Manager and the Council. Every public utility operating within the City shall furnish to such agency regular reports as to capital outlay, property retirements, operating revenues, operating expenses, taxes and other accounting matters according to the standard accounting classification issued for such utilities by the Public Service Commission of Nevada. In addition, the City may require reports regarding salaries, wages, employees, contracts, service performance and all other records of operation that pertain to proper rate adjustments on the basis of facts and regular administration.

2. The agency established or designated by the Council shall also make appropriate efforts to obtain proper annual revision of rates of private utilities which do not operate under the franchise terms of this Charter and which are not subject to municipal regulation by general law. It may initially obtain proper surveys of operating expenses, taxes and other charges, and of the net capital investment in the properties used in public service within the City, and thereupon may endeavor, through negotiation with the utility, to obtain proper rate adjustments. If it cannot obtain due agreement, it shall file a complaint and petition with the Public Service Commission of Nevada for a formal rate inquiry. In such proceeding it shall represent the consumers at large and shall prepare and present in legal form all the evidence with respect to cost of service and other elements as required in the public interest. It shall obtain all requisite data for successive rate revisions, and at the end of each calendar or fiscal year, it shall endeavor to secure any revision of rates indicated by the showing of facts, and if necessary shall proceed again with a request for formal inquiry by the Public Service Commission of Nevada.

SECTION 134. CONDEMNATION

The City, by initiative ordinance, shall have the right to condemn the property of any public utility. The public utility shall receive just compensation for the taking of its property. Such an initiative petition must be voted on by the people and cannot be passed by simple acceptance of the Council. (1959 Charter)

SECTION 135. ESTABLISHMENT OF MUNICIPALLY OWNED AND OPERATED UTILITIES

Effective July 1, 2001 through June 30, 2003

Except as otherwise provided in NRS 268.830, 268.832 and 268.834, the city shall have power to own and operate any public utility, to construct and install all facilities that are reasonably needed, and to lease or purchase any existing utility properties used and useful in public service. The city may also furnish service in adjacent and nearby communities which may be conveniently and economically served by the municipally owned and operated utility, subject to: (a) Agreements with such communities; (b) provisions of state law; (c) provisions of the Boulder City Act of 1958. The council may provide by ordinance for the establishment of such utility, but an ordinance providing for a newly owned and operated utility shall be enacted only after such hearings and procedure as required herein for the granting of a franchise, and shall also be submitted to and approved at a popular referendum; provided, however, that an ordinance providing for any extension, enlargement, or improvement of an existing utility may be enacted as a matter of general municipal administration. The city shall have the power to execute long-term contracts for the purpose of augmenting the services of existing municipally owned utilities. Such contracts shall be passed only in the form of ordinances and may exceed in length the terms of office of the members of the

council.

Effective July 1, 2003

The city shall have power to own and operate any public utility, to construct and install all facilities that are reasonably needed, and to lease or purchase any existing utility properties used and useful in public service. The city may also furnish service in adjacent and nearby communities which may be conveniently and economically served by the municipally owned and operated utility, subject to: (a) Agreements with such communities; (b) provisions of state law; (c) provisions of the Boulder City Act of 1958. The council may provide by ordinance for the establishment of such utility, but an ordinance providing for a newly owned and operated utility shall be enacted only after such hearings and procedure as required herein for the granting of a franchise, and shall also be submitted to and approved at a popular referendum; provided, however, that an ordinance providing for any extension, enlargement, or improvement of an existing utility may be enacted as a matter of general municipal administration. The city shall have the power to execute long-term contracts for the purpose of augmenting the services of existing municipally owned utilities. Such contracts shall be passed only in the form of ordinances and may exceed in length the terms of office of the members of the council. (Add. 23, Amd. 1, 2001 Legislative Session)

SECTION 136. MUNICIPAL UTILITY ORGANIZATIONS

The Council may provide for the establishment of a separate department to administer the utility function, including the regulation of privately owned and operated utilities and the operation of municipally owned utilities. Such department shall keep separate financial and accounting records for each Municipally-owned and operated utility and prior to February 1 of each fiscal year, shall prepare for the City Manager in accordance with his specifications a comprehensive report of each utility. The responsible departments or officer shall endeavor to make each utility financially self-sustaining, unless the Council shall by ordinance adopt a different policy. All net profits derived from Municipally-owned and operated utilities may be expended in the discretion of the Council for general Municipal purposes.

(a) The rates for the products and services of any Municipally-owned and operated utility shall only be established, reduced, altered or increased by resolution of the City Council following a public hearing. (Add. 8, Amd. 5, 6-7-1977)

SECTION 137. FINANCIAL PROVISIONS

The City may finance the acquisition of privately owned utility properties, the purchase of land, and the cost of all construction and property installation for utility purposes by borrowing in accordance with the provisions of general law.

Appropriate provisions shall be made, however, for the amortization and retirement of all bonds within a maximum period of 40 years. Such amortization and retirement may be effected through the use of depreciation funds or other financial resources provided through the earnings of the utility.

SECTION 138. SALE OF PUBLIC UTILITIES; PROVISIO

1. No public utility of any kind, after having been acquired by the City, may thereafter be sold or leased by the City, unless the proposition for the sale or lease has been submitted to the electors of the City at a special election or primary or general Municipal election or primary or general State election. After a majority vote of those electors in favor of the sale, the sale may not be made except after 30 days' published notice thereof, except that the provisions of this Section do not apply to a sale by the Council of parts, equipment, trucks, engines and tools, which have become obsolete or worn out, any of which equipment may be sold by the Council in the regular course of business.

2. A special election may be held only if the City Council determines, by a unanimous vote, that an emergency exists. The determination made by the City Council is conclusive unless it is shown that the City Council acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the City Council must be commenced within 15 days after the City Council's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the City Council to prevent or mitigate a substantial financial loss to the City or to enable the City Council to provide an essential service to the residents of the City. (Add. 16, Amd. 2, 1-1-1994)

ARTICLE XV REAL ESTATE

- 139. Real Estate Officer; Appointment, Powers and Duties
- 140. Disposition of City-Owned Lands; General Regulations
- 141. Disposition of City-Owned Lands; Exceptions
- 142. Proceeds from Real Estate Transactions
- 143. Expenditures from Capital Improvement Fund
- 144. Development of the Eldorado Valley Transfer Area

SECTION 139. REAL ESTATE OFFICER; APPOINTMENT, POWERS AND DUTIES

1. There may be a department of real estate, the head of which shall be the Real Estate Officer, who shall be, or be appointed by, the City Manager with the concurrence of the City Council, for such time as the Council determines to be necessary, to advise and assist them in the disposition of City-owned lands.

2. The Real Estate Officer shall be bonded in sufficient amount to protect the City; shall have had previous professional experience in real estate transactions; and shall demonstrate that no conflict of interests exists, or is incipient, between his employment by the City and his means of livelihood prior to such employment. Any conflict of interest shall be grounds for immediate dismissal.

SECTION 140. DISPOSITION OF CITY-OWNED LANDS; GENERAL REGULATIONS

1. Except as otherwise provided in the laws of this State, the Boulder City Act of 1958, and Section 141, all City-owned lands shall be sold, leased or otherwise disposed of by the City Council in accordance with the provisions of this Section for the maximum benefit of the City. (1959 Charter)

A. All City-owned lands shall be sold or otherwise disposed of by ordinance, and any sales or disposition of parcels of more than one acre must be approved by the registered voters of the City at an election held in conjunction and in accordance with the election as required by Article XV, Section 143 of the Boulder City Charter. (Add. 18, Amd. 2, 6-3-1997)

B. All such sales, leases or other dispositions shall be at or above the current appraised value, and such appraisal and advertisement shall be previously ordered by the Council. (Add. 7, Amd. 5, 6-3-1975)

(1) Following approval of the Council such appraisal shall be final and binding for a period of one (1) year or until a reappraisal is ordered by the Council, whichever shall first occur. (Add. 8, Amd. 6, 6-7-1977)

C. Not less than five (5) days prior to the consummation of any sale, lease or other disposition of City-owned lands, notice of such disposition shall be advertised at least once in a newspaper qualified pursuant to the provisions of Nevada Revised Statutes, Chapter 238, as amended from time to time, and published in the City or County, and posted in at least two (2) public places within the City.

(1) Notice of the sale, lease or other disposition of City-owned lands may be incorporated in the Notice of Filing of such ordinance, in accordance with the provisions of Section 22, provided such Notice shall be posted in two (2) public places in the City.

(2) If sale, lease or other disposition is to be by public auction or sealed bid, as determined by the Council, notice of such disposition shall be advertised at least once in a newspaper qualified pursuant to the provisions of Nevada Revised Statutes, Chapter 238, as amended from time to time, and published in the City or County, not less than thirty (30) days prior to such proposed disposition, and shall be posted in at least two (2) public places within the City.

D. The Council shall reserve the right to reject any or all bids or offers received for City-owned lands.

E. All City-owned lands may be sold or otherwise disposed of on a time payment basis with a minimum down payment of at least 15% down at a rate of interest of not less than 5% per annum on the declining balance.

(1) Improved lands under lease at the time of incorporation of the City may be sold on a time payment basis without down payment at a rate of interest not less than 5% per annum on the declining balance.

F. The City Council may attach any conditions to any sale, lease or other disposition of City-owned lands as may appear to the Council to be in the best interest of the City. (1959 Charter)

SECTION 141. DISPOSITION OF CITY-OWNED LANDS; EXCEPTIONS:

1. The Council is authorized, on whatever terms it deems satisfactory, to negotiate sale, lease or otherwise dispose of City-owned lands directly with bona fide nonprofit corporations and bona fide

charitable, religious, educational, eleemosynary and governmental organizations or corporations, organized on such basis that they operate not for profit, and provided further, that any of the foregoing corporations or organizations have qualified for an exemption from Federal Income Tax under the Internal Revenue Code. (Add. 24, Amd. 1, 6-3-2003)

2. The Council is authorized to lease property, on whatever terms it deems satisfactory, for a specified, limited purpose and time when the Planning Commission recommends that such use will result in a benefit to the community.

3. The Council is authorized to negotiate the sale of City-owned cemetery lots on any terms deemed satisfactory by the Council, and such sales are exempt from the appraisal, advertising, and ordinance requirements stipulated in Section 140.

4. (Repealed by Add. 18, Amd. 2, 6-3-1997)

5. (Repealed by Add. 15, Amd. 1, 6-4-1991)

6. The Council is authorized to exchange City-owned lands when necessary for the best interest of the City, providing such exchange will not be in violation of any condition in a gift or devise of real property to the City, except that such exchanges shall be consummated in accordance with the provisions of Section 140 unless otherwise provided in the laws of this State.

SECTION 142. PROCEEDS FROM REAL ESTATE TRANSACTIONS

1. Proceeds from all sales and other dispositions of real estate, except leases and interest on time payment sales, shall be placed in a special fund, hereinafter referred to as the Capital Improvement Fund, with the following exceptions:

A. Not more than 2% of the sale price of the land sold, as may be determined by the Council, which shall be used for promotion and advertising of City-owned lands.

B. The cost of advertising, title insurance, escrow, real estate commission, and other normal costs of sale.

C. The cost of providing utility services in excess of the capacity required for a parcel of land which has been sold to assure adequate utility services for other parcels not yet developed or sold. (1959 Charter)

2. Proceeds received from all leases which are subject to the operation of a self-supporting fund (Enterprise Fund) may be returned to that Fund. (Add. 10, Amd. 8, 6-2-1981)

3. Proceeds received from all leases and interest on time-payment sales of City-owned lands shall be apportioned in the ratio of 20% to current operational expenses of the City, 20% to the Capital Improvement Fund and 60% divided between the Capital Improvement Fund and current operational expenses as may be determined by the Council. (Add. 11, Amd. 6, 6-7-1983)

SECTION 143. EXPENDITURES FROM CAPITAL IMPROVEMENT FUND

1. All expenditures from the Capital Improvement Fund must be approved by a simple majority of the votes cast by the registered voters of the City on a proposition placed before them in a special election or general Municipal election or general State election. (Add. 28, Amd. 3, 11-2-2010)

2. A special election may be held only if the City Council determines, by a unanimous vote, that an emergency exists. The determination made by the City Council is conclusive unless it is shown that the City Council acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the City Council must be commenced within 15 days after the City Council's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the City Council to prevent or mitigate a substantial financial loss to the City or to enable the City Council to provide an essential service to the residents of the City. (Add. 16, Amd. 2, 1-1-1994)

SECTION 144: DEVELOPMENT OF THE ELDORADO VALLEY TRANSFER AREA

1. The land acquired by the City pursuant to an agreement entered into on July 9, 1995 between the Colorado River Commission, as an agency of the State of Nevada, and the City, will be used only for and limited to public recreational uses, solar energy facilities, a desert tortoise preserve, utility lines, easements, roads, rights-of-way, communication towers, antennas and similar governmental uses and for existing lease and lease options.

2. Any residential, commercial or industrial development or uses in the land area, other than the uses listed in Section 1, must be approved by the registered voters of the City. (Add. 20, Amd. 1, 11-3-1998)

ARTICLE XVI SCHEDULE

146. Election to Ratify Charter; Primary Election

(Repealed by Add. 15, Amd. 2, 6-4-1991)

147. Incorporation of City (Repealed by Add. 15, Amd. 2, 6-4-1991)

148. General Election (Repealed by Add. 15, Amd. 2, 6-4-1991)

149. Oaths of Councilmen; First Meeting; Election of Mayor and Assistant Mayor (Repealed by Add. 15, Amd. 2, 6-4-1991)

150. Temporary Limitations on Council's Powers; Effective Date (Repealed by Add. 15, Amd. 2, 6-4-1991)

Footnote 1: "This act" refers to NRS 268 which states if a vacancy occurs on the governing body of a city, the governing body may, in lieu of appointment, declare by resolution a special election to fill the vacancy.

Footnote 2: Editor's correction.

Footnote 3: Editor's correction.

Footnote 4: Editor's correction.

EXHIBIT “5”



MEMORANDUM

To: Lorene Krumm, City Clerk

From: Kiernan McManus, Mayor

Date: October 3, 2019

Re: Request for 10/22/2019 Council Meeting Agenda Items

Please include the following items for the City Council Meeting Agenda scheduled for October 22, 2019.

- 1) For possible action and direction to City Staff: Review of Utility Rate increases scheduled to begin in January 2020 for possible adjustment or repeal.

- 2) For possible action and direction to City Staff: Retention of a special counsel by the City Council to review and advise on the following issues.
 - a) Nevada Open Meeting Law standards and requirements.
 - b) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney and Municipal Judge.
 - c) Other issues as determined by a majority of City Council.

- 3) For possible action and direction to City Staff and the Parks Recreation Committee regarding the recommendation from the Committee to construct new soccer fields.

I will provide additional information for these items next week. Please let me know if there are any questions or concerns.

EXHIBIT “6”

From: Steven Morris <SMorris@bcnv.org>
Sent: Monday, October 7, 2019 10:35 AM
To: Kiernan McManus <KMcManus@bcnv.org>
Cc: Lorene Krumm <LKrumm@bcnv.org>; Al Noyola <ANoyola@bcnv.org>
Subject: Agenda Items

Dear Mayor McManus, _____

I am in receipt of your memorandum dated October 3, 2019 to City Clerk Lorene Krumm wherein you request three items to be included in the Council Meeting Agenda scheduled for October 22, 2019. I also note where you indicate in the memorandum that you will provide additional information for these items next week.

My input is limited to your proposed Item 2, which states:

- 2) For possible action and direction to City Staff: Retention of a special counsel by the City Council to review and advise on the following issues.
 - a) Nevada Open Meeting Law standards and requirements.
 - b) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney and Municipal Judge.
 - c) Other issues as determined by a majority of City Council.

In an effort to assist you with the additional information you will be providing, specifically with respect to Item 2, I offer the following:

Paragraph 3(a) of Section 15 of the Boulder City Charter states, "The City Attorney shall: (a) Be legal adviser of the Council and all other city officers."

Paragraph 4 of Section 15 goes on to state, "When from any cause the City Attorney is unable to perform the duties of his or her office, he or she may, with the consent of the Council, appoint some other qualified attorney to act temporarily in his or her place, **and** whenever, in the judgment of the Council, the interests of the City require it, the Council may employ assistant or special counsel." (Emphasis added).

In other words, if the City Attorney is unable to perform the duties of his office, assistant or special counsel may be appointed by the City Attorney with the consent of the Council, and in the judgment of the Council when the City Attorney is unable to perform the duties of his office, the Council may also employ assistant or special counsel if the interests of the City require it.

With respect to your proposed Agenda Item 2(a), there is no rationale provided as to why or how the City Attorney would be unable to perform the duties of his office when it comes to advising the Council on the Nevada Open Meeting Law standards and requirements. Furthermore, there is no explanation within the agenda description of any legitimate "interest of the City" that would require the employment of assistant or special counsel to review and advise the Council on Nevada Open Meeting Law standards and requirements. In addition to the annual training that is provided to the Council, the City Attorney's and Clerk's offices have been advising individual Council Members on the Nevada Open Meeting Law as those individual questions and needs arise. In circumstances where clarification or even a second opinion may be necessary, the City Attorney's and Clerk's offices have contacted the Attorney General to provide an opinion. The City Attorney's office stands ready to provide any opinion or advice the Council deems necessary with respect to the Nevada Open Meeting Law. If your desire is to obtain additional training with respect to the Nevada Open Meeting Law for the entire Council we can certainly arrange for additional training without placing it on an agenda.

With respect to your proposed Agenda Item 2(b), there could be circumstances where the employment of assistant or special counsel may be appropriate when the City Attorney is unable to perform the duties of his office due to legal conflicts. As previously mentioned, Paragraph 3(a) of Section 15 of the Boulder City Charter states, "The City Attorney shall: (a) Be legal adviser of the Council and all other city officers." Dual representation could give rise to a legal conflict when the interest of the Council and all other city officers are not aligned. In such circumstances, the appointment of assistant or special counsel may be in the interest of the City and therefore appropriate.

However, the current agenda statement is not "clear and complete" and a higher degree of specificity is required to satisfy the open meeting laws as to what the Council will deliberate and potentially take action on. See *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). Keep in mind that the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do. The use of general or vague language is to be avoided, and more

detail would be required to put the public on notice of the desire or intent of employing assistant or special counsel to review and advise the Council on the employment contracts of the appointed city officers.

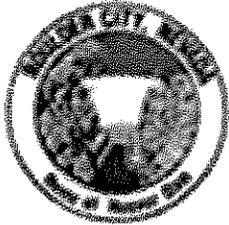
With respect to your proposed Agenda Item 2(c), the agenda statement is not "clear and complete" under NRS 241.020(2)(d)(1). Use of the phrase "Other issues as determined by a majority of City Council" does not comply with the statute's requirement that every agenda item contain a clear and complete statement of topics to be considered. See AG File No. 10-049 (December 17, 2010); AG File No. 10-052 (December 21, 2010).

Agendas should be written in a manner that gives notice to the public of the items anticipated to be brought up at the meeting and agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body.

I trust the additional information that you will be providing this week will give the clarity that is required by Nevada law and hopefully the information set forth above will assist you in that effort. If you would like to discuss this matter further with Al, Lorene and myself after your briefing today we would be happy to answer any questions or concerns that you may have regarding your proposed agenda items. We look forward to assisting you in preparing agenda items that comply with Nevada law.

Best regards,

Steve



Steven L. Morris, Esq.
City Attorney

City of Boulder City | www.bcnv.org
401 California Ave., Boulder City NV 89005
E: SMorris@bcnv.org | P: 702.293.9238 | F: 702.293.9438

EXHIBIT “7”

From: Kiernan McManus
Sent: Monday, October 07, 2019 12:29 PM
To: Steven Morris
Cc: Lorene Krumm; Al Noyola
Subject: RE: Agenda Items

Mr. Morris,
I believe it would have been best to wait for the additional information I will be providing before engaging in an analysis of my request for the inclusion of items on the upcoming Council meeting agenda. However, I would be happy to discuss the issues this afternoon in general terms.

Best regards,
Kiernan

Kiernan J. McManus
City of Boulder City
Mayor
(702) 293-9208 Work
(702) 466-0785 Mobile
kmcmanus@bcnv.org
401 California Avenue
Boulder City, NV 89005
www.bcnv.org

From: Steven Morris <SMorris@bcnv.org>
Sent: Monday, October 7, 2019 10:35 AM
To: Kiernan McManus <KMcManus@bcnv.org>
Cc: Lorene Krumm <LKrumm@bcnv.org>; Al Noyola <ANoyola@bcnv.org>
Subject: Agenda Items

Dear Mayor McManus,

I am in receipt of your memorandum dated October 3, 2019 to City Clerk Lorene Krumm wherein you request three items to be included in the Council Meeting Agenda scheduled for October 22, 2019. I also note where you indicate in the memorandum that you will provide additional information for these items next week.

My input is limited to your proposed Item 2, which states:

- 2) For possible action and direction to City Staff: Retention of a special counsel by the City Council to review and advise on the following issues.
 - a) Nevada Open Meeting Law standards and requirements.
 - b) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney and Municipal Judge.
 - c) Other issues as determined by a majority of City Council.

In an effort to assist you with the additional information you will be providing, specifically with respect to Item 2, I offer the following:

Paragraph 3(a) of Section 15 of the Boulder City Charter states, "The City Attorney shall: (a) Be legal adviser of the Council and all other city officers."

Paragraph 4 of Section 15 goes on to state, "When from any cause the City Attorney is unable to perform the duties of his or her office, he or she may, with the consent of the Council, appoint some other qualified attorney to act temporarily in his or her place, **and** whenever, in the judgment of the Council, the interests of the City require it, the Council may employ assistant or special counsel." (Emphasis added).

In other words, if the City Attorney is unable to perform the duties of his office, assistant or special counsel may be appointed by the City Attorney with the consent of the Council, and in the judgment of the Council when the City Attorney is unable to perform the duties of his office, the Council may also employ assistant or special counsel if the interests of the City require it.

With respect to your proposed Agenda Item 2(a), there is no rationale provided as to why or how the City Attorney would be unable to perform the duties of his office when it comes to advising the Council on the Nevada Open Meeting Law standards and requirements. Furthermore, there is no explanation within the agenda description of any legitimate "interest of the City" that would require the employment of assistant or special counsel to review and advise the Council on Nevada Open Meeting Law standards and requirements. In addition to the annual training that is provided to the Council, the City Attorney's and Clerk's offices have been advising individual Council Members on the Nevada Open Meeting Law as those individual questions and needs arise. In circumstances where clarification or even a second opinion may be necessary, the City Attorney's and Clerk's offices have contacted the Attorney General to provide an opinion. The City Attorney's office stands ready to provide any opinion or advice the Council deems necessary with respect to the Nevada Open Meeting Law. If your desire is to obtain additional training with respect to the Nevada Open Meeting Law for the entire Council we can certainly arrange for additional training without placing it on an agenda.

With respect to your proposed Agenda Item 2(b), there could be circumstances where the employment of assistant or special counsel may be appropriate when the City Attorney is unable to perform the duties of his office due to legal conflicts. As previously mentioned, Paragraph 3(a) of Section 15 of the Boulder City Charter states, "The City Attorney shall: (a) Be legal adviser of the Council and all other city officers." Dual representation could give rise to a legal conflict when the interest of the Council and all other city officers are not aligned. In such circumstances, the appointment of assistant or special counsel may be in the interest of the City and therefore appropriate.

However, the current agenda statement is not "clear and complete" and a higher degree of specificity is required to satisfy the open meeting laws as to what the Council will deliberate and potentially take action on. See *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). Keep in mind that the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do. The use of general or vague language is to be avoided, and more

detail would be required to put the public on notice of the desire or intent of employing assistant or special counsel to review and advise the Council on the employment contracts of the appointed city officers.

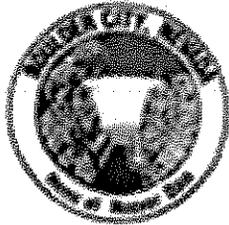
With respect to your proposed Agenda Item 2(c), the agenda statement is not "clear and complete" under NRS 241.020(2)(d)(1). Use of the phrase "Other issues as determined by a majority of City Council" does not comply with the statute's requirement that every agenda item contain a clear and complete statement of topics to be considered. See AG File No. 10-049 (December 17, 2010); AG File No. 10-052 (December 21, 2010).

Agendas should be written in a manner that gives notice to the public of the items anticipated to be brought up at the meeting and agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body.

I trust the additional information that you will be providing this week will give the clarity that is required by Nevada law and hopefully the information set forth above will assist you in that effort. If you would like to discuss this matter further with Al, Lorene and myself after your briefing today we would be happy to answer any questions or concerns that you may have regarding your proposed agenda items. We look forward to assisting you in preparing agenda items that comply with Nevada law.

Best regards,

Steve



Steven L. Morris, Esq.
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EXHIBIT “8”



MEMORANDUM

To: Lorene Krumm, City Clerk
From: Kiernan McManus, Mayor
Date: October 14, 2019
Re: Employment of Special Counsel to Advise City Council

Please include the following memorandum regarding the possible retention of special counsel for the City Council Meeting Agenda scheduled on October 22, 2019.

I believe circumstances exist that require the retention of a special counsel to provide advice and information to the City Council. The City Charter contains the following language with regard to such action by City Council. The specific section is 15. Paragraph 4.

SECTION 15. CITY ATTORNEY

1. (Repealed by Add. 3, Amd. 1, 5-2-1967; see par. 8.1)
2. The City Attorney shall be an attorney at law, admitted to practice before the supreme court of the State of Nevada, who has been in actual practice of law in the State of Nevada for at least 3 years next preceding his appointment. If practicable, the Council shall appoint an attorney who has had special training or experience in municipal corporation law.
3. The City Attorney shall:
 - (a) Be legal advisor of the Council and all other City officers.
 - (b) Prosecute all violations of City ordinances. (1959 Charter)
 - (c) Draft or review all contracts and other legal documents or instruments required or requested by the Council or the City Manager. (Add. 15, Amd. 2, 6-4-1991)
 - (d) Perform such other legal services as the Council may direct. (1959 Charter)



MEMORANDUM

(e) Attend all meetings of the Council unless previously excused therefrom by three members thereof or by the Mayor or by the Mayor pro tem in the absence of the Mayor. In the event he is excused, he is to provide at his own expense substitute counsel for such meeting. (Add. 24, Amd. 1, 6-3-2003)

(f) Possess such other powers, and perform such additional duties, not in conflict with this Charter, as may be prescribed by ordinance.

4. When from any cause the City Attorney is unable to perform the duties of his office, he may, with the consent of the Council, appoint some other qualified attorney to act temporarily in his place, and whenever, in the judgment of the Council, the interests of the City require it, the Council may employ assistant or special counsel.

5. The City Attorney shall deliver all books, records, papers, documents and personal property of every description, owned by the City, to his successor in office, and the City shall provide a means of safeguarding the same. (1959 Charter)

6. (Repealed by Add. 9, Amd. 2, 6-5-1979; see par. 8.1.A)

7. (Repealed by Add. 3, Amd. 1, 5-2-1967; see par. 8.1)

Paragraph 4 of section 15 includes two separate, possible actions. The first action allows the City Attorney to appoint a qualified attorney to temporarily serve in his place if he is unable to perform the duties of his office. The second possible action provides for the Council to employ an assistant or special counsel if the Council determines the interests of the City require such employment.

I believe sufficient examples exist regarding conflicting information and interpretation of the Open Meeting Law that require the employment of a special counsel. There has been a finding of a violation of the Open Meeting Law regarding the need to provide information to the public. A recent violation has been alleged for improper notice of an agenda item. Other examples exist where the information provided to the Council has been contradictory or inconsistent.

On a different issue, I believe the employment of a special counsel is needed to review the contracts of the Municipal Officers. The Officers defined by the City Charter as being the City Manager, the City Clerk, the City Attorney and the Municipal Judge. There is an inherent conflict of interest present for the City Attorney to engage in a review of the contracts and advise the Council as his



MEMORANDUM

contract is one of the contracts to be reviewed. Provisions in his contract are similar to provisions in the other contracts.

Other City Council members may also discuss additional reasons for the need to employ a special counsel. The discussion may include the need to employ a special counsel for only one narrow issue or to employ a special counsel for a broader range of issues. The provision in the City Charter is broadly worded and the authority to employ a special counsel is at the discretion of a majority of the City Council.

The agenda item is specific for the purpose of whether a special counsel should be employed in the interests of the City. The discussion of the reasons for doing so or for not doing so are to be discussed by members of City Council if they choose to do so.

I believe the needs for employing a special counsel are present and in the interests of the City. The issue needs to be discussed by the City Council to determine if a majority of the Council wishes to proceed in determining the process for such employment.

EXHIBIT “9”

RE: Agenda Items

Steven Morris

Sent: Tuesday, October 15, 2019 11:17 AM

To: Kiernan McManus

Cc: Lorene Krumm; Al Noyola; Lauren Oliver

Attachments: RequestForAgendaItem_10-22~1.pdf (325 KB) ; RequestForAgendaItems_10-2~1.pdf (85 KB) ; 18_02_27.pdf (8 MB) ; 2019-10-22 Agenda.pdf (218 KB)

Mayor McManus,

I am in receipt of the additional information that you provided to City Clerk Lorene Krumm yesterday afternoon regarding your proposed agenda Item 2 (Item 18 on the City Council Agenda) for the October 22, 2019 City Council meeting. (See attached). In my role as legal advisor of the Council I am desirous to assist you and the Council in avoiding conflict, reducing risk and complying with the law. However, that requires collaborative communication with staff and clear and complete communication to the public on the policy items and issues the Council intends to deliberate and potentially take action on. Unfortunately, no additional information or specificity was provided to your proposed agenda items since your briefing on October 7, 2019, and I have been informed that no additional information or specificity regarding your proposed agenda Item 2 has been provided to the City Manager or the City Clerk. The City Attorney's office is always available to meet with you, or any Council Member, at your convenience to assist in crafting agenda titles that comply with the OML. I know the same holds true of the City Manager's and the City Clerk's office. Without any additional information or specificity that is required by the Open Meeting Law ("OML"), it remains my opinion that your proposed agenda items are not "clear and complete" and therefore violate the OML.

In your support materials provided to the City Clerk on October 14, 2019 you state:

"I believe sufficient examples exist regarding conflicting information and interpretation of the Open Meeting Law that require the employment of a special counsel. There has been a finding of a violation of the Open Meeting Law regarding the need to provide information to the public. A recent violation has been alleged for improper notice of an agenda item. Other examples exist where the information provided to the Council has been contradictory or inconsistent."

With respect to the statement above, I am not aware of any specific examples where the information provided to the Council has been contradictory or inconsistent. During my tenure, the City Council has never directed the City Attorney's office to provide a legal opinion on any aspect of the OML. Furthermore, the only finding of a violation of the OML against the City in the last two years by the Attorney General's Office was not the result of conflicting information or interpretation of the OML, but rather the Clerk's Office not being aware that resumes were provided to the Council and not to the public by the HR Department, and those resumes not being timely produced to the public. (See attached Findings by the AG). Finally, with respect to the recent alleged violation of the OML the issue is not improper notice of an agenda item, but rather Council's deliberations and ultimate action exceeding the scope of an agenda item. The City Attorney's office has not received any comments or feedback from Members of Council regarding my opinion and proposed corrective action provided on October 10, 2019 and set forth as Item 13 on the attached Agenda.

No further information or specificity was provided to your proposed Items 2(a) and (b) and it remains my opinion that they violate the OML in their current form. Again, the City Attorney's, City Manager's and City Clerk's offices are available to assist you in crafting agenda items that comply with the OML and are further desirous to assist the Council in avoiding potential violations.

The intent of the OML is to be completely transparent in what issues the Council will be deliberating and taking action on and the only unknown should be the vote of the respective Council Members on those issues.

Best regards,

Steve



Steven L. Morris, Esq.
City Attorney

City of Boulder City | www.bcnv.org
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E: SMorris@bcnv.org | P: 702.293.9238 | F: 702.293.9438

From: Kiernan McManus
Sent: Monday, October 07, 2019 12:29 PM
To: Steven Morris
Cc: Lorene Krumm; Al Noyola
Subject: RE: Agenda Items

Mr. Morris,

I believe it would have been best to wait for the additional information I will be providing before engaging in an analysis of my request for the inclusion of items on the upcoming Council meeting agenda. However, I would be happy to discuss the issues this afternoon in general terms.

Best regards,
Kiernan

Kiernan J. McManus
City of Boulder City
Mayor
(702) 293-9208 Work
(702) 466-0785 Mobile
kmcmanus@bcnv.org
401 California Avenue
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From: Steven Morris <SMorris@bcnv.org>
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Subject: Agenda Items

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In an effort to assist you with the additional information you will be providing, specifically with respect to Item 2, I offer the following:

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Paragraph 4 of Section 15 goes on to state, "When from any cause the City Attorney is unable to perform the duties of his or her office, he or she may, with the consent of the Council, appoint some other qualified attorney to act temporarily in his or her place, and whenever, in the judgment of the Council, the interests of the City require it, the Council may employ assistant or special counsel." (Emphasis added).

In other words, if the City Attorney is unable to perform the duties of his office, assistant or special counsel may be appointed by the City Attorney with the consent of the Council, and in the judgment of the Council when the City Attorney is unable to perform the duties of his office, the Council may also employ assistant or special counsel if the interests of the City require it.

With respect to your proposed Agenda Item 2(a), there is no rationale provided as to why or how the City Attorney would be unable to perform the duties of his office when it comes to advising the Council on the Nevada Open Meeting Law standards and requirements. Furthermore, there is no explanation within the agenda description of any legitimate "interest of the City" that would require the employment of assistant or special counsel to review and advise the Council on Nevada Open Meeting Law standards and requirements. In addition to the annual training that is provided to the Council, the City Attorney's and Clerk's offices have been advising individual Council Members on the Nevada Open Meeting Law as those individual questions and needs arise. In circumstances where clarification or even a second opinion may be necessary, the City Attorney's and Clerk's offices have contacted the Attorney General to provide an opinion. The City Attorney's office stands ready to provide any opinion or advice the Council deems necessary with respect to the Nevada Open Meeting Law. If your desire is to obtain additional training with respect to the Nevada Open Meeting Law for the entire Council we can certainly arrange for additional training without placing it on an agenda.

With respect to your proposed Agenda Item 2(b), there could be circumstances where the employment of assistant or special counsel may be appropriate when the City Attorney is unable to perform the duties of his office due to legal conflicts. As previously mentioned, Paragraph 3(a) of Section 15 of the Boulder City Charter states, "The City Attorney shall: (a) Be legal adviser of the Council and all other city officers." Dual representation could give rise to a legal conflict when the interest of the Council and all other city officers are not aligned. In such circumstances, the appointment of assistant or special counsel may be in the interest of the City and therefore appropriate.

However, the current agenda statement is not "clear and complete" and a higher degree of specificity is required to satisfy the open meeting laws as to what the Council will deliberate and potentially take action on. See *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). Keep in mind that the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do. The use of general or vague language is to be avoided, and more

detail would be required to put the public on notice of the desire or intent of employing assistant or special counsel to review and advise the Council on the employment contracts of the appointed city officers.

With respect to your proposed Agenda Item 2(c), the agenda statement is not "clear and complete" under NRS 241.020(2)(d)(1). Use of the phrase "Other issues as determined by a majority of City Council" does not comply with the statute's requirement that every agenda item contain a clear and complete statement of topics to be considered. See AG File No. 10-049 (December 17, 2010); AG File No. 10-052 (December 21, 2010).

Agendas should be written in a manner that gives notice to the public of the items anticipated to be brought up at the meeting and agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body.

I trust the additional information that you will be providing this week will give the clarity that is required by Nevada law and hopefully the information set forth above will assist you in that effort. If you would like to discuss this matter further with Al, Lorene and myself after your briefing today we would be happy to answer any questions or concerns that you may have regarding your proposed agenda items. We look forward to assisting you in preparing agenda items that comply with Nevada law.

Best regards,

Steve



Steven L. Morris, Esq.
City Attorney

City of Boulder City | www.bcnv.org

401 California Ave., Boulder City NV 89005

E: SMorris@bcnv.org | P: 702.293.9238 | F: 702.293.9438

EXHIBIT “10”



MEMORANDUM

To: Steven Morris, Boulder City City Attorney

From: Kiernan McManus, Boulder City Mayor

Date: October 15, 2019

RE: Employment of Special Counsel – Discussion of Open Meeting Law Requirements

I have reviewed the information you sent on October 7, 2019 regarding the agenda item I requested for possible action and discussion of the retention of a special counsel to advise the City Council. I have reviewed the City Charter section 15 paragraph 4. The conclusion I come to differs from the conclusion you provided. My reading of paragraph 15. 4. finds the intention is to provide two independent processes for providing temporary legal counsel. The first process provides for the City Attorney to appoint a qualified attorney to act temporarily in place of the City Attorney if the City Attorney is unable to to perform his duties. The appointment must be confirmed by a majority of the City Council.

Paragraph 15. 4. then provides a second, independent process for the City Council to employ a special counsel if a majority of the Council determines such employment is in the interest of the City. To read the paragraph as though the separate processes were dependent on one another renders the paragraph non-nonsensical.

I submitted additional information for inclusion in the Council meeting for the October 22, 2019 agenda packet that provides the points I believe are important for consideration by the Council to employ a special counsel. The purpose of requesting an agenda item to discuss the issue of employing a special counsel is to provide the basis for discussion and deliberation by the Council as a whole for that purpose. I believe we are all aware that I cannot know in advance of such discussions what the thinking of a majority of the Council may be for this issue. A primary purpose of the Open Meeting Law is to have such discussions and deliberations held during a public meeting. To say that each Council member must specify each thought regarding the issue of employing a special counsel published prior to the meeting voids the purpose of having discussion and deliberation on the issue. I do not believe we can know what each thought might be until such discussion and deliberation is held. The public will be able to observe such discussions and how the issue may or may not lead to a decision by a majority of the Council.



MEMORANDUM

I requested the inclusion of the agenda item to discuss the retention of a special counsel and provided two of the reasons I believe such action is necessary. I also included the statement "Other issues as determined by a majority of City Council." as I cannot know the thoughts on the issue of all the members of the Council prior to the discussion occurring. That is the purpose of requesting the agenda item. Other members of the Council may have their own thoughts on the issue and it is not my intent to restrict the discussion to only the issues I believe are important for the employment of a special counsel.

In your message you cite the Nevada Supreme Court decision of Sandoval v. Board of Regents. I am including a portion of that decision below. My understanding of this portion of the decision is that the Board of Regents violated the Open Meeting Law because discussions were held that did not pertain to the agenda item and that the item was not specific to the issue at hand. I do not believe that is the case with regard to the agenda item I have requested. My request is for a specific purpose. That is purpose is to provide the opportunity for the Council to discuss the possible reasons for retaining a special counsel to advise the Council. The reasons for doing so and the scope of the advice that may be sought from a special counsel is precisely the reason for holding a discussion and allowing the Council the opportunity to deliberate on the issue.

Portion of Sandoval v. Board of Regents –

Whether the Board violated the Open Meeting Law is a closer question. Although the agenda clearly and completely stated that, among other things, the Committee would inform the Board about unfinished business and a schedule of topics for the remaining year, we conclude that this was too broad to alert the public of the possibility that Committee recommendations, such as obtaining a redacted NDI report and proposing an examination of disarming the UNLV police, would be discussed.[15] Because the Board's agenda did not properly apprise the public that it would engage in a discussion that would lead to informal action to obtain a redacted NDI report, we conclude that, as a matter of law, the Board violated the Open Meeting Law.

In summary, I am including another portion of the Sandoval v. Board of Regents decision I believe is pertinent. The court stated that if members of the Board of Regents had a desire to discuss a topic the members were free to have the topic included on an agenda. The purpose for doing so is to allow the Board or the Council to engage in a discussion and possibly determine actions to take at a public meeting.



MEMORANDUM

Portion of Sandoval v. Board of Regents –

We agree with the Texas Court of Appeals that requiring the regents to comply with Nevada's Open Meeting Law does not infringe on their First Amendment rights. The regents are free to speak on any topic of their choosing, provided they place the topic on the agenda, thereby satisfying the "clear and complete" standard found in NRS 241.020(2)(c)(1).

Furthermore, we do not regard this requirement as too burdensome.

Please let me know if you would believe additional discussion on this issue is needed.

EXHIBIT “11”

Lorene Krumm

From: Kiernan McManus
Sent: Tuesday, October 15, 2019 3:33 PM
To: Lorene Krumm
Cc: Al Noyola; Lauren Oliver; Steven Morris
Subject: RE: Agenda Items

Lorene,

You are correct. I wish to proceed with item no. 18 with the supplemental material and all materials that City Staff may have contributed on the item.

Best regards,
Kiernan

From: Lorene Krumm
Sent: Tuesday, October 15, 2019 2:05 PM
To: Kiernan McManus
Cc: Al Noyola; Lauren Oliver; Steven Morris
Subject: RE: Agenda Items

For confirmation, you wish to proceed with Item No. 18 after receiving the City Attorney's opinion on your supplemental material? You wish to attach your supplemental material along with the material provided to you by the City Attorney as backup to this item?

Lorene Krumm, MMC, CPO
City Clerk
City of Boulder City
401 California Avenue
Boulder City NV 89005
(702) 293-9208

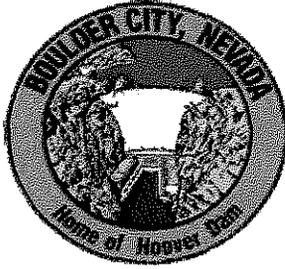
From: Kiernan McManus <KMcManus@bcnv.org>
Sent: Tuesday, October 15, 2019 12:06 PM
To: Steven Morris <SMorris@bcnv.org>
Cc: Lorene Krumm <LKrumm@bcnv.org>; Al Noyola <ANoyola@bcnv.org>; Lauren Oliver <LOliver@bcnv.org>
Subject: RE: Agenda Items

Mr. Morris,

Thank you for your response. Please review the attached memorandum. If you would like to discuss further please let me know.

Best regards,
Kiernan

EXHIBIT “12”



**CITY COUNCIL
REGULAR MEETING AGENDA**

**COUNCIL CHAMBER, 401 CALIFORNIA AVENUE,
BOULDER CITY NV 89005**

OCTOBER 22, 2019 - 7:00 PM

ITEMS LISTED ON THE AGENDA MAY BE TAKEN OUT OF ORDER; TWO OR MORE AGENDA ITEMS FOR CONSIDERATION MAY BE COMBINED; AND ANY ITEM ON THE AGENDA MAY BE REMOVED OR RELATED DISCUSSION MAY BE DELAYED AT ANY TIME.

CALL TO ORDER

INVOCATION AND PLEDGE OF ALLEGIANCE

PUBLIC ANNOUNCEMENTS

ADMINISTRATION OF OATH OF OFFICE TO FIREFIGHTERS RYAN BODILY, JASON DARDANO, AND CARL FORD

PUBLIC COMMENT

PUBLIC COMMENT DURING THIS PORTION OF THE AGENDA MUST BE LIMITED TO MATTERS ON THE AGENDA FOR ACTION. EACH PERSON HAS UP TO FIVE MINUTES TO SPEAK ON A SPECIFIC AGENDA ITEM.

FOR POSSIBLE ACTION: APPROVAL OF REGULAR AGENDA

FOR POSSIBLE ACTION: APPROVAL OF CONSENT AGENDA

CONSENT AGENDA

1. For possible action: Approval of minutes
 - A. September 24, 2019 regular City Council meeting
 - B. October 8, 2019 regular City Council meeting
2. For possible action: Resolution No. 7009, a resolution of the City Council of Boulder City, Nevada approving a Special Event Promotion Grant in the amount of \$2,500 for the Nevada Preservation Foundation's Water Over the Dam: The Catalytic Boulder City event
3. For possible action: Resolution No. 7010, a resolution of the City Council of Boulder City, approving Agreement No. 19-1847 between the City of Boulder City and the Regional Transportation Commission (RTC) to provide project funding for the Neighborhood Rehabilitation Program

- 2019-20, B.C. Project No. 20-1094-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget
4. For possible action: Resolution No. 7011, a resolution of the City Council of Boulder City, approving Agreement No. 19-1848 between the City of Boulder City and the Regional Transportation Commission of Southern Nevada to provide project funding for the Railroad Museum Road, B.C. Project No. 20-1095-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget
 5. For Possible Action: Matters relating to Copper Mountain Solar 5 project:
 - A. Resolution No. 7012, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1849, a non-exclusive easement for Access between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 1, LLC
 - B. Resolution No. 7013, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1850, a non-exclusive easement for Access between the City of Boulder City and Copper Mountain Solar 5, LLC
 - C. Resolution No. 7014, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1851, a non-exclusive easement for Fencing along Copper Mountain Solar 1 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 1 LLC
 - D. Resolution No. 7015, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1852, a non-exclusive easement for Fencing along the Copper Mountain Solar 2 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 2, LLC
 - E. Resolution No. 7016, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1853, a non-exclusive easement for Fencing along the Copper Mountain Solar 4 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 4, LLC
 - F. Resolution No. 7017, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1854, a non-exclusive easement for Collection of Solar Energy between the City of Boulder City and Copper Mountain Solar 5, LLC
 - G. Resolution No. 7018, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1855, a non-exclusive easement for access to existing operations/maintenance facility at the Copper Mountain Solar 3 project between the City of Boulder City, Copper Mountain Solar 5, LLC, and Copper Mountain Solar 3, LLC

H. Resolution No. 7019, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1856, a non-exclusive easement for construction of a gen-tie line, communications improvements, paved access road and a water line upon the Copper Mountain Solar 2 project site between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 2, LLC

I. Resolution No. 7020, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1857, a non-exclusive easement for construction of electrical collection facilities, communications improvements, temporary water line, improved driveway and related improvements between the City of Boulder City and Copper Mountain Solar 5, LLC

6. For possible action: Matters pertaining to Copper Mountain Solar 5 and NV Energy:

A. Resolution No. 7021, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1858, a non-exclusive easement for construction of electrical transmission and communication facilities upon the Copper Mountain Solar 4 site between the City of Boulder City, Nevada Power Company and Copper Mountain Solar 4, LLC

B. Resolution No. 7022, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1859, a non-exclusive easement for utility facilities between the City of Boulder City and Nevada Power Company

C. Resolution No. 7023, a resolution of the City Council of Boulder City amending the easement agreement dated August 30, 2006 between Boulder City, Nevada Solar One LLC, and Nevada Power Company for the expansion of the substation located at the Nevada Solar One project site

REGULAR AGENDA

7. Introduction of Bill 1864, an Ordinance of the City Council of Boulder City authorizing the issuance by the City of its "Boulder City, Nevada, Utility Revenue Refunding Bonds, Series 2019" in the maximum principal amount of \$26,000,000 for the purpose of refinancing the existing Utility Revenue Refunding Bonds, Series 2006 obligation, providing the form, terms and conditions thereof

8. For possible action: Matters pertaining to the proposed expansion of a mobile home park:

A. Public hearing on a proposed rezoning

B. Consideration of Bill No. 1862, an Ordinance of the City of Boulder City, Nevada to amend the Zoning Map to rezone approximately 0.48 acres within

Gingerwood Mobile Home Park at 1300 Gingerwood Street from S, Study to MP, Mobile Home Park to match the remainder of the park (AM-19-342)

C. Resolution No. 7024, a resolution of the City Council of Boulder City, Nevada awarding 7 residential allotments for Construction Year 2019-20 for Gingerwood Mobile Home Park at 1300 Gingerwood Street (AFDA-19-192)

9. For possible action: Matters pertaining to modifying the Master Plan and Map to increase conservation area and update the plan for related and other categories

A. Public hearing on proposed Master Plan Amendments

B. Consideration of Resolution No. 7025, a resolution of the City Council of Boulder City, Nevada to amend the Boulder City Master Plan to amend Chapter 4 to add references to the Open Lands-Conservation and Manufacturing-Energy categories, along with minor updates to the chapter for consistency (MPA-19-037)

C. Consideration of Resolution No. 7026, a resolution of the City Council of Boulder City, Nevada to amend the Master Plan Future Land Use Map to change the land use designation for approximately 1,986 acres in the Eldorado Valley Transfer Area from Open Lands to Open Lands-Conservation (MPA-19-038)

10. For possible action: Matters pertaining to modifying the Master Plan and Zoning Maps to increase area for solar development

A. Public hearing on a proposed Master Plan Amendment and a proposed rezoning

B. Consideration of Resolution No. 7027, a resolution of the City Council of Boulder City, Nevada to amend the Master Plan Future Land Use Map to change the land use designation for approximately 143.4 acres west of U.S. 95 within the Boulder City Townsite from Open Lands to Manufacturing-Energy (MPA-19-039)

C. Consideration of Bill No. 1863, an Ordinance of the City of Boulder City, Nevada to amend the Zoning Map to rezone approximately 143.4 acres west of U.S. 95 within the Boulder City Townsite from GO, Government Open Space and S, Study to ER, Energy Resource (AM-19-343)

11. For Possible Action: Resolution No. 7028 a resolution of the City Council of Boulder City, Nevada, to the Clark Board of Commissioners expressing opposition to the approval of the waiver of development standards for the Pro Gun Club Sign located at 12801 S. Highway 95
12. For Possible Action: Consideration of proposed changes to the 2020 Land Management Process List
13. For possible action: Intent to take corrective action for Open Meeting Law violation which occurred at the October 8, 2019 City Council meeting, Item No. 13 - Review of draft Request for Proposals and

possible staff directive regarding land sale (Tract 350) around the Boulder Creek Golf Course

14. For Possible Action: Review of draft Request for Proposals and possible staff directive regarding land sale (Tract 350) around the Boulder Creek Golf Course
15. For possible action: Temporary suspension of Section No. 3.1 of the City Council's Rules of Procedure to vacate the November 26, 2019 regularly scheduled City Council meeting
16. City Manager's Report:

A. Claims Paid List, September 2019

B. Financial Report, September 2019

17. For possible action: Review and possible adjustment or repeal of utility rate increases scheduled to begin in January 2020 (as requested by Mayor McManus)
18. For possible action: Discussion and possible staff directive regarding retention of a special counsel by the City City Council to review and advise on the following issues: (as requested by Mayor McManus)

A) Nevada Open Meeting Law standards and requirements

B) Employment contracts of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge

C) Other issues as determined by a majority of City Council

19. For possible action: Discussion and possible staff directive regarding the recommendation from the Parks and Recreation Committee to construct new soccer fields (as requested by Mayor McManus)

20. Public Comments

Each person has up to five minutes to speak at the discretion of the Mayor/Chair. Comments made during the Public Comment period of the agenda may be on any subject. All remarks shall be addressed to the City Council/Board as a whole, not to any individual member of the Council/Board, of the audience, or of the City staff. There shall be no personal attacks against the Mayor, members of the City Council, the City staff, or any other individual. No person, other than members of the City Council and the person who has the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council without the permission of the Mayor or Presiding Officer. No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.

21. City Council's Report

Supporting material is on file and available for public inspection at the City Clerk's Office, 401 California Avenue, Boulder City, Nevada 89005 and the Boulder City website at www.bcnv.org, as per NRS 241. To request supporting material, please contact the City Clerk Lorene Krumm at (702) 293-9208 or lkrumm@bcnv.org.

Notice to persons with disabilities: Members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the City

Clerk by telephoning (702) 293-9208 at least seventy-two hours in advance of the meeting.

This notice and agenda has been posted on or before 9 a.m. on the third working day before the meeting at the following locations:

Boulder City Hall, 401 California Avenue

United States Post Office, 1101 Colorado Street

Boulder City Senior Center, 813 Arizona Street

Boulder City Parks & Recreation, 900 Arizona Street

www.bcnv.org

<https://notice.nv.gov/>

EXHIBIT “13”

From: Michael D. Detmer <MDetmer@ag.nv.gov>
Sent: Thursday, October 17, 2019 4:01 PM
To: Kiernan McManus <KMcManus@bcnv.org>
Subject: oml opinions

CAUTION: This email originated from outside the Boulder City, NV network. Please note the sender and maintain caution when opening external links/attachments.

Mayor McManus,

As discussed, please find below links to some OML opinions that may provide guidance with the question you presented. If you should have any additional questions or concerns after their review, please do not hesitate to contact my office.

OMLO 13897-215 (Jan. 27, 2017), http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/OML_AGO-13897-215.pdf

OMLO 13897-204 (Sept. 30, 2016), http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/OML_AGO-13897-204.pdf

OMLO 13897-191 (Jun. 2, 2016), http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/OML_AGO-138979-191.pdf

Kindest Regards,

Mike Detmer
Deputy Attorney General

Division of Boards and Open Government
Bureau of Gaming and Government Affairs
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
mdetmer@ag.nv.gov
702-486-3420

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EXHIBIT “14”



MEMORANDUM

To: Steven Morris, Boulder City City Attorney

From: Kiernan McManus, Boulder City Mayor

Date: October 18, 2019

RE: Employment of Special Counsel – Discussion of Open Meeting Law Requirements

I have spoken with a Deputy Attorney General regarding the concerns that have been presented about the agenda item I requested to discuss the possibility of employing a special counsel by the City Council. While he is understandably unable to provide a specific legal opinion on this issue at this time, he did provide me with some previous opinions concerning the issue of “clear and complete” agenda items.

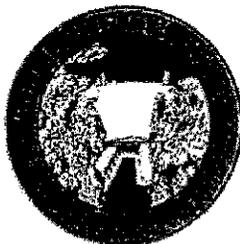
I have reviewed those opinions and believe the opinions further confirm that the agenda item I have requested meets the standard of being clear and complete. The opinions suggested by the Deputy Attorney General are as follows –
OMLO 13897-215 (Jan. 27, 2017)
OMLO 13897-204 (Sept. 30, 2016)
OMLO 13897-191 (Jun. 2, 2016)

I plan to proceed with the agenda item I have requested for the purposes stated in the agenda item. Further action on the issue of employing a special counsel to advise the City Council will depend on the outcome of the meeting scheduled for October 22, 2019. I will be requesting the memorandum I provided to you on October 15, 2019 in response to your concerns as well as this memorandum be provided to the City Council and the public prior to the meeting on October 22, 2019.

If you wish to discuss this matter further please let me know.

cc: Lorene Krumm, Boulder City City Clerk
Al Noyola, Boulder City City Manager

EXHIBIT “15”



**CITY COUNCIL
REGULAR MEETING MINUTES**

**COUNCIL CHAMBER, 401 CALIFORNIA AVENUE
BOULDER CITY, NEVADA 89005**

Tuesday, October 22, 2019 – 7:00 PM

CALL TO ORDER

The regular meeting of the Boulder City Council, County of Clark, State of Nevada, was called to order at 7:00 P.M., Tuesday, October 22, 2019, in the Council Chamber, City Hall, by Mayor McManus in due compliance with law, the Charter, and the Council's Rules of Procedure.

Council members present: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

Absent: Council Member Warren Harhay (1)

Also present: Acting City Manager Dennis Porter, City Attorney Steve Morris, City Clerk Lorene Krumm, Deputy City Clerk Tami McKay, Administrative Officer Bryce Boldt, Community Development Director Michael Mays, Interim Fire Chief Steve Walton, Parks and Recreation Director Roger Hall, Police Chief Tim Shea, Public Works Director Keegan Littrell

INVOCATION AND PLEDGE OF ALLEGIANCE

The Invocation was offered by Kurt Hedland of Bethany Baptist Church; followed by the Pledge of Allegiance.

PUBLIC COMMENT/ANNOUNCEMENTS

Mayor McManus welcomed the fourth-grade students in attendance to earn their Nevada Citizen Award.

Acting City Manager Dennis Porter offered happy birthday wishes to Council Member Adams.

**ADMINISTRATION OF THE OATH OF OFFICE TO FIREFIGHTERS RYAN BODILY,
JASON DARDANO, AND CARL FORD**

Tami McKay, Deputy City Clerk, administered the Oath of Office to the firefighters.

PUBLIC COMMENT

Neal Siniakin expressed his support for the hiring of a special counsel. He stated the appraisal for Tract 350 was only valid for one year and was completed last February. He stated he did not think there was an Open Meeting Law violation at the October 8, 2019 meeting. He stated City Attorney Morris should offer an apology for suggesting the Open Meeting Law had been violated.

Duncan McCoy recommended postponing Item No. 17 until the contracted rate study was completed. He suggested the City not waste taxpayer money to hire a special attorney. He suggested members of Council read the numerous opinions available regarding the Open Meeting Law found on the Nevada Attorney General's website. He said with respect to hiring outside counsel to assist with the contracts of the appointed officials, the contracts were written in plain English and they should be capable of understanding what the contracts say. He suggested the Council read the exit clauses. He said Item No. 18C was too vague to be useful and did not describe what the conversation may cover. He encouraged the Council to become familiar with how the Nevada Attorney General had ruled on similar matters.

Ross Johnson stated the City had hired a rate consultant and had formed an advisory committee regarding utility rates. He questioned if the Council was interested in receiving information and recommendations from the consultant or committee prior to taking action on the utility rates. He stated any additional information the Council needed with respect to the Open Meeting Law could be obtained from the Attorney General rather than a private attorney.

Ken Green stated he had indicated that information staff had provided regarding Item 8B during the September Planning Commission meeting were inaccurate. He noted he had submitted an appeal on the item, but would like to withdraw his appeal since he had been misinformed on a number of issues.

Richard Stuart stated he believed the Open Meeting Law had been violated at the October 8, 2019 Council meeting concerning the Request for Proposal for the land near Bristlecone. He stated he lived in the area and was not aware action would be taken regarding the street; he had received information from the media. He stated Bristlecone Drive was very busy and needed a median. He said the current members of Council campaigned regarding the misuse of City funds, and now they were the ones who were wasting by suggesting to hire another attorney. He stated the description of Item No. 18 were too vague. He said the Council should be more open about what exactly it was proposing.

Rod Woodbury thanked the Council for their service to the community. He expressed support for several agenda items including the Railroad Museum project, and the Copper Mountain 5 project among others. He stated Item No. 18 was confusing and asked that the reason for suggesting hiring a special counsel be explained. He said he was also confused about the item relating to the employment contracts as the backup material did not provide any reasoning; therefore, the public was left to speculate. He echoed the sentiments expressed by previous speakers stating the agenda title was too vague. He said the Attorney General had the enforcement and investigative authority for the Nevada Open Meeting Law, and there were resources and training available. He stated hiring

special counsel for matters related to the Open Meeting Law was an attempt to circumvent the City Attorney and and the Open Meeting Law. He said with respect to the item related to the utility rate increases, the Council should consider capital projects, aging utility infrastructure, and the debt on the raw water line.

Fred Voltz asked his comments be added verbatim. (See attached)

Victor Miller remarked that he had reviewed Agenda Item No. 18B and its backup materials and felt that it was unclear. He said he had no ability to prepare for the meeting as the agenda title was not clear or concise. He said he was always available and open to discuss any matters related to his contract with any of the members of the City Council.

David McMillan stated that he bought Gingerwood Mobile Home Park approximately 18 months ago. He noted he was proposing to add seven more spaces to house seniors 55 years and older. He noted there is a waiting list of seniors that would like to live there as it was a nice place to live that was affordable.

Judy Hoskins addressed Item No. 13 and indicated the agenda should have stated "possible" or "alleged" violation. She noted that the City Attorney, City Manager, and City Clerk have training on the Open Meeting Law and should advise Council when a violation occurs.

No further comments were offered, and the public comment period was closed.

FOR POSSIBLE ACTION: APPROVAL OF REGULAR AGENDA

City Attorney Steve Morris recommended the removal of Item No. 18.

Mayor McManus explained that he had requested Item No. 18 and would not be removing it from the Agenda.

Motion: Approve the Regular Agenda.

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member Claudia Bridges, Council Member Tracy Folda (3)

NAY: Council Member James Howard Adams (1)

Absent: Council Member Warren Harhay (1)

The motion was approved.

FOR POSSIBLE ACTION: APPROVAL OF CONSENT AGENDA

Motion: Move Item No. 4 to the Regular Agenda and approve the Consent Agenda, as amended

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

CONSENT AGENDA

1. For possible action: Approval of minutes
 - A. September 24, 2019 Regular City Council Meeting
 - B. October 8, 2019 Regular City Council Meeting
2. For possible action: Resolution No. 7009, a resolution of the City Council of Boulder City, Nevada approving a Special Event Promotion Grant in the amount of \$2,500 for the Nevada Preservation Foundation's Water Over the Dam: The Catalytic Boulder City Event

A staff report had been submitted by Economic Development Coordinator Raffi Festekjian and included in the October 22, 2019, City Council Agenda Packet.

3. For possible action: Resolution No. 7010, a resolution of the City Council of Boulder City, Nevada approving agreement No. 19-1847 between the City of Boulder City and the Regional Transportation (RTC) to provide project funding for the Neighborhood Rehabilitation Program 2019-20, B.C. Project No. 20-1094-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget

A staff report had been submitted by Public Works Director Keegan Littrell and included in the October 22, 2019, City Council Agenda Packet.

4. For possible action: Resolution No. 7011, a resolution of the City Council of Boulder City, approving Agreement No. 19-1848 between the City of Boulder City and the Regional Transportation Commission of Southern Nevada to provide project funding for the Railroad Museum Road, B.C. Project No. 20-1095-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget

This Item had been moved to the Regular Agenda.

5. For possible action: Matters relating to Copper Mountain Solar 5 project:
- A. Resolution No. 7012, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1849, a non-exclusive easement for Access between the City of Boulder City, Cooper Mountain Solar 5, LLC and Copper Mountain Solar 1, LLC
 - B. Resolution No. 7013, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1850, a non-exclusive easement for Access between the City of Boulder City and Cooper Mountain Solar 5, LLC
 - C. Resolution No. 7014, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1851, a non-exclusive easement for Fencing along Copper Mountain Solar 1 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 1 LLC
 - D. Resolution No. 7015, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1852, a non-exclusive easement for Fencing along the Copper Mountain Solar 2 Boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 2, LLC
 - E. Resolution No. 7016, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1853, a non-exclusive easement for Fencing along the Copper Mountain Solar 4 boundary between the City of Boulder City, Copper Mountain Solar 5, LLC and Copper Mountain Solar 4, LLC
 - F. Resolution No. 7017, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1854, a non-exclusive easement for Collection of Solar Energy between the City of Boulder City and Copper Mountain Solar 5
 - G. Resolution No. 7018, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1855, a non-exclusive easement for access to existing operations/maintenance facility at the Copper Mountain Solar 3 project between the City of Boulder City, Copper Mountain Solar 5, LLC, and Copper Mountain Solar 3, LLC
 - H. Resolution No. 7019, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1856, a non-exclusive easement for construction of a gen-tie line, communications improvements, paved access road and a water line upon the Copper Mountain Solar 2 project site between the City of Boulder City, Copper Mountain Solar 5, LLC, and Copper Mountain Solar 2, LLC
 - I. Resolution No. 7020, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1857, a non-exclusive easement for construction of electrical collection facilities, communications improvements, temporary water line, improved driveway and related improvements between the City of Boulder City and Copper Mountain Solar 5, LLC

A staff report had been submitted by Finance Director Pelletier and included in the October 22, 2019, City Council Agenda Packet.

6. For possible action: Matters pertaining to Copper Mountain Solar 5 and NV Energy
 - A. Resolution No. 7021, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1858, a non-exclusive easement for construction of electrical transmission and communication facilities upon the Copper Mountain Solar 4 site between the City of Boulder City, Nevada Power Company, and Copper Mountain Solar 4, LLC
 - B. Resolution No. 7022, a resolution of the City Council of Boulder City approving easement Agreement No. 19-1859, a non-exclusive easement for utility facilities between the City of Boulder City and Nevada Power Company
 - C. Resolution No. 7023, a resolution of the City Council of Boulder City amending the easement Agreement dated August 30, 2006 between Boulder City, Nevada Solar One LLC, and Nevada Solar One project site

A staff report had been submitted by Finance Director Pelletier and included in the October 22, 2019, City Council Agenda Packet.

REGULAR AGENDA

4. For possible action: Resolution No. 7011, a resolution of the City Council of Boulder City, approving Agreement No. 19-1848 between the City of Boulder City and the Regional Transportation Commission of Southern Nevada to provide project funding for the Railroad Museum Road, B.C. Project No. 20-1095-STR, and amending both the revenues and expenditures of the Fiscal Year 2019-2020 capital budget

A staff report had been submitted by Public Works Director Keegan Littrell and included in the October 22, 2019, City Council Agenda Packet.

Council Member Folda stated she had heard concerns the Railroad Museum would not receive funding for two more years and was \$20M short for construction costs. She questioned if the City would be building a road to nowhere and asked how it could impact surrounding businesses.

Public Works Director Littrell responded the plan was only conceptual. He explained some of the connector roads and business accesses stating the roadway would parallel Linear Park. He stated the project would take approximately nine months to design.

In response to a question by Council Member Folda, Public Works Director Littrell explained there was no design work involved in conceptual plans. He said \$500K was an estimate. He said if the agreement was approved, the City would hire a consultant.

In response to a question by Council Member Bridges, Public Works Director Littrell confirmed the road was the only part of the future project the RTC will fund.

Council Member Adams expressed some concern with a possible road to nowhere especially if it was not creating additional access to the businesses in the area.

Public Works Director Littrell noted that the road would offer some additional street side parking and alternate routes for drivers.

Mayor McManus commented it may be in the best interest of Boulder City to show the State the City was planning on completing the project by moving forward with the required infrastructure.

Motion: Approve Resolution No. 7011

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

7. Introduction of Bill No. 1864, an Ordinance of the City Council of Boulder City authorizing the issuance by the City of its "Boulder City, Nevada, Utility Revenue Refunding Bonds, Series 2019_ in the maximum principal amount of \$26,000,000 for the purpose of refinancing the existing Utility Revenue Refunding Bonds, Series 2006 obligation, providing the form, terms and conditions thereof

A staff report had been submitted by Finance Director Diane Pelletier and included in the October 22, 2019, City Council Agenda Packet.

Motion: Introduce Bill No. 1864 and waive the reading except for the title, as follows:

Moved by: Council member Bridges

"Bill 1864, an Ordinance of the City Council of Boulder City authorizing the issuance by the City of its "Boulder City, Nevada, Utility Revenue Refunding Bonds, Series 2019" in the maximum principal amount of \$26,000,000 for the purpose of refinancing the existing Utility Revenue Refunding Bonds, Series 2006 obligation, providing the form, terms and conditions thereof."

Bill No. 1864 will be considered at the November 12, 2019 regarding City Council meeting.

8. For possible action: Matters pertaining to the proposed expansion of a mobile home park:

A staff report had been submitted by City Planner Danielewicz and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Michael Mays provided an overview of the staff report.

In response to a question by Council Member Adams, Community Development Director Mays stated the Planning Commission granted variances on the lot size, requirement for putting up a wall on the southern end, and landscaping on the eastern perimeter.

Council member Adams complimented Community Development Director Mays for reaching out to Mr. Green and providing clarification on the issue.

Mayor McManus noted Mr. Green had expressed concern for potential flooding in the area. He explained extensive work had been done in the area surrounding Gingerwood, so it was likely it would be removed from the flood plan.

A. Public hearing on a proposed rezoning

Mayor McManus announced it was the time and place scheduled to conduct the public hearing on the proposed Zoning Map amendment.

Neal Siniakin commented the Planning Commission regularly approved variances, and the criteria had not been met for a variance for the fence. He recommended that more training be given to the Planning Commissioners regarding when variances should be permitted.

Council Member Folda stated she had concerns since the land abuts City land. She noted she has other concerns stating the proposed Zoning Map amendment required two findings. She said she did not think it promoted the health and safety morals of the general welfare of the City which was one of the required findings in order to rezone.

Council Member Bridges pointed out the desire for affordable housing in the City, and said it was an opportunity to create seven new homes in the community.

Council Member Adams stated providing the ability for the additional housing did conform to the required findings.

- B. Consideration of Bill No. 1862, an Ordinance of the City of Boulder City, Nevada to amend the Zoning Map to rezone approximately 0.48 acres within Gingerwood Mobile Home Park at 1300 Gingerwood Street from S, Study to MP, Mobile Home Park to match the remainder of the park (AM-19-342)

Motion: Approve Bill No. 1862 with the following findings:

1. The proposed amendment is in general conformance with the adopted Comprehensive Plan for the City; and
2. That the proposed amendment promotes the health, safety, morals or the general welfare of the City

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges (3)

NAY: Council Member Tracy Folda (1)

Absent: Council Member Warren Harhay (1)

The motion was approved.

Bill No. 1862 will become known as Ordinance No. 1638 effective October 14, 2019.

- C. Resolution No. 7024, a resolution of the City Council of Boulder City, Nevada awarding 7 residential allotments for Construction Year 2019-20 for Gingerwood mobile Home Park at 1300 Gingerwood Street (AFDA-19-192)

Motion: Approve Resolution No. 7024

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges (3)

NAY: Council Member Tracy Folda (1)

Absent: Council Member Warren Harhay (1)

The motion was approved.

9. For possible action: Matters pertaining to modifying the Master Plan and Map to increase conservation area and update the plan for related and other categories

A staff report had been submitted by City Planner Danielewicz and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report.

In response to a question by Council Member Bridges, Community Development Director Mays stated the lot size for LDR2 (low density residential) was reduced from 7,000 to 5,000 s.f. to recognize the City has a zoning district that allows for low density residential at 5,000 s.f.

In response to a question by Council member Adams, Community Development Director Mays stated in older residential neighborhoods, although zoned R1-7, the lots are 5,000 s.f. or less. He said the avenue streets would be an example of a neighborhood zoned R1-7 with smaller lots.

Council Member Folda asked that the acronyms in the Master Plan be changed for better clarity.

Community Development Director Mays noted if some of the acronyms were changed, it may not correspond with other aspects of the document.

A brief discussion followed regarding the Energy Zone being listed under Manufacturing.

City Clerk Krumm stated no changes could be made to the Master Plan request without sending the changes back to the Planning Commission for a report.

Mayor McManus expressed concern with the use of the word manufacturing and the interpretation for what is allowed in the Eldorado Valley. He said it was a significant issue on the proposed changes. He added that he did not feel the City needed an additional designation for the 5,000 s.f. lots.

A. Public hearing on proposed Master Plan Amendments

Mayor McManus declared it was the time and place scheduled to conduct the public hearing on the proposed Master Plan text amendment (MPA-19-037), and the proposed Master Plan Future Land Use Map amendment (MPA-19-038).

Neal Siniakin indicated he would not want to see 5,000 s.f. lots in the Master Plan since it may open the door for future developers. He added that he also disagreed with using the word "manufacturing."

No further comments were offered and the public hearing was declared closed.

Council Member Adams remarked he was not opposed to R1-5 lots. He said a variety of homes and lots sizes were good and the Master Plan addressed having a variety of homes. He said nice, unique homes can be built on smaller lots.

B. Consideration of Resolution No. 7025, a resolution of the City Council of Boulder City, Nevada to amend the Boulder City Master Plan to amend Chapter 4 to add references to the Open Lands-Conservation and Manufacturing-Energy categories, along with minor updates to the chapter for consistency (MPA-19-037)

No motion was made. No action taken.

- C. Consideration of Resolution No. 7026, a resolution of the City Council of Boulder City, Nevada to amend the Master Plan Future Land Use Map to change the land use designation for approximately 1,986 acres in the Eldorado Valley Transfer Area from Open Lands to Open Lands-Conservation (MPA-19-038)

Motion: Approve Resolution No. 7026 based on the findings that the amendment will conserve and promote the public health, safety and general welfare.

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

10. For possible action: Matters pertaining to modifying the Master Plan and Zoning Maps to increase area for solar development

A staff report had been submitted by City Planner Danielewicz and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report.

In response to a question by Council member Adams, Community Development Director Mays stated the failure of the last item did not have an effect on the current agenda item; there was no conflict. He said he would be working with the Planning Commission and would bring back the Master Plan Amendment to the Council.

- A. Public hearing on a proposed Master Plan Amendment and a proposed rezoning

Mayor McManus opened the public hearing for this Item.

Greg Todd commented that the term manufacturing energy was appropriate for the use of solar panels; solar panels manufactured energy by converting the energy.

No further comments were offered, and the public hearing was declared closed.

- B. Consideration of Resolution No. 7027, a resolution of the City Council of Boulder City, Nevada to amend the Master Plan Future Land Use Map to change the land use designation for approximately 143.4 acres west of U.S. 95 within the Boulder City Townsite from Open Lands to Manufacturing-Energy (MPA-19-039)

Motion: Approve Resolution No. 7027 with the findings that the amendment will conserve and promote the public health, safety and general welfare.

Moved by: Council Member Adams **Seconded by:** Council Member Bridges

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

C. Consideration of Bill No. 1863, an Ordinance of the City of Boulder City, Nevada to amend the Zoning Map to rezone approximately 143.4 acres west of U.S. 95 within the Boulder City Townsite from GO, Government Open Space and S, Study to ER, Energy Resource (AM-19-343)

Motion: Approve Bill No. 1863 with the findings that amendment is in conformance with the proposed amendment to the adopted Master Plan for the City and promotes the health safety morals for the general welfare of the City.

Moved by: Council Member Bridges **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

Bill No. 1863 will become known as Ordinance No. 1639 effective October 14, 2019.

11. For possible action: Resolution No. 7028 a resolution of the City Council of Boulder City, Nevada, to the Clark County Board of Commissioners expressing opposition to the approval of the waiver of development standards for the Pro Gun Club Sign located at 12801 S. Highway 95

A staff report had been submitted by Community Development Director Michael Mays and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report.

In response to a question by Council Member Folda, City Attorney Morris stated the business owner would not have a viable claim for legal retribution if the City opposed the sign.

Mayor McManus stated he had attended the County Planning Commission meeting. He said the business owner had appealed the case to the Supreme Court. He said he was not in favor of allowing a sign that exceeded the current zoning laws.

Community Development Director Mays stated the current zoning allowed for a 50 s.f. sign. He said with the most recent proposal approved by the Clark County Planning Commission, the area of signage was 1,100 s.f. total.

Motion: Approve Resolution 7028

Moved by: Mayor McManus **Seconded by:** Council Member Bridges

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

12. For Possible Action: Consideration of proposed changes to the 2020 Land Management Process List

A staff report had been submitted by Community Development Director Michael Mays and included in the October 22, 2019, City Council Agenda Packet.

Community Development Director Mays provided an overview of the staff report. He stated this was the initial step in the process and an opportunity for the Council and community to see what was being proposed. He stated there were no outside submissions this year for the Land Management Process. He said with the recent amendments to the Land Management Process, there was now a mechanism for the Council to evaluate and consider parcels which have been on the list for three years. He said all parcels on the list added in 2017 could be considered. He stated staff's recommendation was included in the backup material; the blue parcels are recommended to remain on the list based on interest. He said the total acreage to retain was 1,279 acres. He noted the City was proposing to add one area to the LMP List referred to as Black Hills North. He said the area was approximately 1,275 acres and located directly north of Black Hills South. He said due to strong interest in the recent RFP for Black Hills South for solar, there would likely be similar requests for Black Hills North.

Motion: Advance the proposed addition of Black Hills North to the Planning Commission for consideration

Moved by: Council Member Bridges **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

13. For Possible action: Intent to take corrective action for Open Meeting Law violation which occurred at the October 8, 2019 City Council meeting, Item No. 13 – Review of draft Request for Proposals and possible Staff directive regarding land sale (Tract 350) around the Boulder Creek Golf Course

A staff report had been submitted by City Attorney Steve Morris and included in the October 22, 2019, City Council Agenda Packet.

City Attorney Morris provided an overview of the staff report. He explained his recommendation was to take corrective action and to table Item No. 14 if the Council wished to remove the median from Bristlecone Street.

Mayor McManus stated he provided copies of an Open Meeting Law opinion from the Attorney General's office to Council and staff, and that copies were available to public. He stated the item provided supported his opinion there was not a violation of the Open Meeting Law.

Council Member Bridges expressed concern the agenda title did not include the word "alleged."

Council Member Folda shared her opinion that Council had only discussed the Request for Proposals (RFP) and the attachments to the RFP were within the scope of the agenda. She said it was unreasonable for the Council to make a determination on the RFP without considering minimum development standards. She said it was her opinion Council discussed what was on the agenda.

Council Member Adams expressed frustration that nothing was said until after the meeting and briefings.

In response to a question by Council member Adams, City Attorney Morris confirmed there was no admission of a violation if the previous action taken was voided.

Council member Adams stated he was comfortable voiding the previous action taken by Council and moving forward.

Council Member Bridges agreed and said if the Council had the opportunity to have a discussion in a way that is clear and concise, she was comfortable voiding the action and moving forward.

Mayor McManus expressed concern regarding how the item was described on the agenda; the item was agendized as an actual violation and not an allegation. He stated it was a significant issue. He said the Council had only received information a verbal allegation had been made, so he was unaware of specific concerns by members of the community. He commented the Council could not allow people to make allegations in order to negate decisions. He said with respect to the allegation itself, what occurred was the City had not agendized the amendments to standards for streets and roadways.

City Attorney Morris stated the allegation was that the Council had strayed from the clear and complete agenda item to discuss and take action on street design standards that were required in the RFP, and the public was not given proper notice. He stated the State allowed public bodies to take corrective action and minimize any action which could occur for an alleged Open Meeting Law violation without admission of any wrongdoing. He said it was his recommendation if the Council wanted to move forward with removal of the median, to table Item No. 14 and provide direction to staff to bring back an item to take action on the design standards for the specific roadways.

Mayor McManus stated the action stated was not his recollection. He said he did not recall a Council member amending any standard for the streets. He questioned if the issue was really about an OML violation, or somebody not liking the decision made and trying to negate a decision by the Council.

City Attorney Morris reviewed the action taken by Council; to remove the median. He said nobody was debating the Council's ability to take action on the design standards; however, the action was not within the scope of the agenda title. He said the City was erring on the side of complete transparency and openness. He said it is incumbent upon the City to take corrective action when it has the ability to do so. He said members of the public have expressed their concern about not having the ability to speak on the matter the Council took action on.

Mayor McManus read a portion of the OML opinion from the Attorney General pertaining to a higher degree of specificity when there is an item of public interest. He said it is not necessary to agendize every possible detail of what is to be discussed. He said the backup material gave clear indication of what was included in the RFP.

Council Member Adams recommended Council follow the recommendation of the City Attorney; it was the City Attorney's opinion there was a violation.

Council member Folda stated a very similar conversation regarding the land surrounding the golf course took place in 2016. She said she believed the reason for the alleged OML

violation was because there was a different City Council in place, not because there was an OML violation. She said it was an attack from people in a certain area of town not getting what they want. She stated the Council was within the scope of the agenda.

City Clerk Krumm stated both the staff and City Council work for the City. She offered clarification stating the street design standards were supporting documents to the RFP, not the RFP itself. She stated the design standards were adopted previously as a stand alone item; any amendments to the street design standards would require a separate agenda item. She stated it was very disappointing to hear members of Council state the matter was being brought forward in order to negate a previous decision. She stated although staff did not address the alleged violation at the time it occurred, the matter had not been brought forward during briefings. She said it would be impossible to know every detail of every document included in the packet materials. She stated it was staff's desire to do what is right to support the Council, and to do what is right for the community. She stated based on the agenda title, the people who live off of Bristlecone would know the Council would be discussing the sale of the land; voters approved the sale of the land in 2010. However, they would have no way of knowing the supporting documents of the RFP would be amended.

Mayor McManus remarked the Council was not to be dictated to by City staff. He said the Council could make up their own mind based on what they determine as facts. He stated Council could seek research from anybody and from any source as they please. He said the Council was not obligated to follow the advice of the City Attorney if they do not feel it is appropriate.

Motion: To take corrective action for the alleged open meeting law violation

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

14. For Possible Action: Review of draft Request for Proposals and possible Staff directive regarding land sale (Tract 350) around the Boulder Creek Golf Course

A staff report had been submitted by Finance Director Diane Pelletier and included in the October 22, 2019, City Council Agenda Packet.

A brief discussion occurred regarding how to proceed with the item and if it should be postponed until the street standards could be discussed.

Council Member Folda suggested that the agenda item be redrafted to allow for more discussion and a more comprehensive RFP. She asked for additional information and discussion on the \$6M drop in the appraisal value.

Motion: Abeyance of Item No. 14 and bring back the item no later than February 2020 when Council has provided input to staff

Moved by: Council Member Bridges **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

15. For Possible Action: Temporary suspension of Section No. 3.1 of the City Council's Rules of Procedure to vacate the November 26, 2019 regularly scheduled City Council meeting

A staff report had been submitted by City Clerk Lorene Krumm and included in the October 22, 2019, City Council Agenda Packet.

City Clerk Krumm provided an overview of the staff report.

In response to a question by Mayor McManus, City Clerk Krumm confirmed the Council would still be meeting the Charter requirement of holding at least one meeting per month if it opted to vacate the November 26, 2019 meeting. She also confirmed the Council had the ability to call for a special meeting if there was an urgent matter.

Council Member Folda noted that there have been two meetings in November for the past 20 years. She said she understands staff wants the day off. She said although school is out for the entire week this year, the next two years there will be school during the week of Thanksgiving.

Council Member Adams expressed concern that the last two meeting packets have been large, and trying to combine two meetings into one may be difficult.

Council Member Bridges noted the Wednesday prior to Thanksgiving is the biggest travel day of the year. She said she likes to see a full room during Council meetings and does not believe the meeting will be as well attended on the Tuesday before Thanksgiving. She said she was planning on calling in because she had plans for the holidays.

Motion: To temporarily suspend Section No. 3.1 of the City Council's rules of procedure to vacate November 26, 2019 meeting

Moved by: Council Member Bridges **Seconded by:** Council Member Adams

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

16. City Manager's Report

- A. Claims Paid List, September 2019
- B. Financial Report, September 2019

The report was received.

17. For Possible Action: Review and possible adjustment or repeal of utility rate increase scheduled to begin in January 2020 (as requested by Mayor McManus)

Finance Director Pelletier commented the City had received recent information from the bond counsel regarding the debt service coverage ratio. She stated the City could cover its debt service coverage ratio without the upcoming rate increase.

Mayor McManus remarked repealing the automatic rate increases would benefit the residents.

Council Member Folda agreed and noted that many citizens will appreciate not having a rate increase.

Motion: To direct Staff to bring back resolutions to repeal the automatic rate increases in Resolution No. 6489 section L, Resolution No. 6490 section I, and Resolution No. 6491 section E

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus, Council Member James Howard Adams, Council Member Claudia Bridges, Council Member Tracy Folda (4)

NAY: None (0)

Absent: Council Member Warren Harhay (1)

The motion was approved.

18. For Possible Action: Discussion and possible staff directive regarding retention of a special counsel by the City Council to review and advise on the following issues: (as requested by Mayor McManus)

Mayor McManus stated the City Attorney had a tremendous amount of conflict of interest; it was inappropriate for the City Attorney to recommend removal of the agenda item.

City Attorney Morris repeated his objection to Item No. 18. He stated he had an ongoing obligation to protect the City Council from possible Open Meeting Law violations. He said he could not determine if a conflict had occurred without more specificity on the agenda title. He added that matters of public concern require a heightened obligation of specificity. He said the item completely lacked specificity. He said there were many problems with the agenda title and it was not due to a lack of trying to obtain the specificity by City staff. He noted the Council always had the ability to meet with him and others to help with formulating an appropriate agenda title. He stated there were not just implications with the Open Meeting Law, but with the Charter and State law as well.

Mayor McManus stated the City Attorney should have recused himself from making any comments regarding this agenda item. He noted the item may have an impact on the employment contract of all of the municipal officers, including the City Attorney. He reiterated there was a conflict of interest for the City Attorney. He stated it was one of the reasons he was moving forward with the item and not taking the recommendation of the City Attorney. He reviewed the agenda item and said it was clear and complete. He said with respect to Item C, the intent was to allow members of the City Council to express ideas regarding the hiring of the special counsel. He said he would withdraw discussion of Item C as he had received feedback from others. He said he has spoken to the Attorney General's office and although he did not receive an official opinion, he received some opinions which substantiated his agenda item was clear and complete.

A. Nevada Open Meeting Law standards and requirements

Mayor McManus stated additional advice was needed regarding issues with the Nevada Open Meeting Law. He said there has been conflicting and inconsistent information provided. He said the Council has the ability and the need to have an attorney where they can ask questions. He said the wording in the Charter was clear the City Council has the ability to hire legal counsel if in the best interest of the City.

B. Employment contract of Municipal Officers including the City Manager, City Clerk, City Attorney, and Municipal Judge

Mayor McManus stated he was the only member of Council involved in the hiring of the City Attorney and City Manager. He said he had voted against both contracts. He said other members of Council should have the opportunity to have someone with a legal

background to provide information to them and formulate a decision what should be done with the contracts, if anything. He said it was a conflict of interest for the City Attorney to provide comments or recommendations on his own contract. He said the discussion does not include the process for employing a special counsel. He said he has conducted his own research and believes it meets all requirements of the Open Meeting Law.

Council Member Bridges expressed she only voted to keep the matter on the agenda in order to share her thoughts. She said the item made her very uncomfortable. She said she does not feel any need to employ a special counsel; she had received training and many materials regarding the Open Meeting Law when she was elected. She stated she understood the employment contracts. She said she has had no reason not to trust staff and the information provided to the City Council. She said she had met with the City Attorney personally to ask questions and address concerns.

Council Member Folda commented that retention of a special council is appropriate since the City Attorney cannot review his own contract. She expressed support of the item.

Mayor McManus remarked the item in the City Attorney's contract regarding working outside of the City was a clear violation of the City Charter, and the issue needs to be addressed.

C. Other issues as determined by a majority of City Council

Motion: To direct Staff to employ a special counsel to advise the City Council on Open Meeting Law issues and the employment contracts of the City Manager, City Clerk, City Attorney, and Municipal Judge. The employment is in the interest of the City and special counsel will be employed by and report directly to City Council as provided for in the City Charter

Moved by: Mayor McManus **Seconded by:** Council Member Folda

Vote:

AYE: Mayor Kiernan McManus and Council Member Tracy Folda (2)

NAY: Council Member James Howard Adams and Council Member Claudia Bridges (2)

Absent: Council Member Warren Harhay (1)

The motion failed.

19. For Possible Action: Discussion and possible staff directive regarding the recommendation from the Parks and Recreation Committee to construct new soccer fields (as request by Mayor McManus)

Public Works Director Littrell explained the changes made to the Capital Improvement Plan (CIP) including the removal of the multiple use soccer field.

Mayor McManus thanked those who serve on the Parks and Recreation Committee and for listening to the desires of the community. He invited committee members to communicate with City Council. He stated his concern was the evaluation of how the capital improvements fit in with other needs within the City. He said the Parks and Recreation Department had a significant amount of proposed capital projects.

Council Member Folda suggested looking into why the City fields are not being used, and see if the City could make it easier for the public to take advantage of those resources.

20. Public Comments

Mr. Siniakin expressed his support for the current City Council. He stated that City Clerk Krumm hid Mr. Morris' resume from the public when he was hired, and that he did not have the necessary qualifications. He stated City Attorney argued in his own pecuniary interest. He said his contract was in violation of the City Charter. He stated City Clerk Krumm intentionally violated the Open Meeting Law for the benefit of Mr. Morris, and Deputy City Clerk McKay assisted. He added Tract 350 should be reconsidered. He noted that traffic on the highway has dropped and businesses on the highway have been negatively affected. He asked Council address the issue.

Ross Johnson asked if the street design standards for Bristlecone Street had been changed.

Mayor McManus suggested he speak with Mr. Mays about his concerns.

Peggy Leavitt asked that the Mayor consider allowing public comments after each agenda item. She said when many of the current Council members were running for office, they campaigned on openness and transparency. She did not understand why public comment was not allowed after each agenda item. She noted the previous mayor was criticized of reducing public comment to three minutes. She stated although there may not have been intent to violate the Open Meeting Law, the Council should err on the side of caution. She said people who lived in the area wanted to be heard on the issue. She also reminded Council that they represent everyone in the City. She said to hear the comment "that section of town" and "push pull" was very offensive. She said all residents were concerned about their neighborhoods.

Mr. Stuart stated the behavior shown toward staff members during the meeting was embarrassing. He remarked that Council Member Folda's comment "people in that area" was disrespectful and unprofessional, and he was very upset. He stated it was important for the Council to be clear on agenda items because although the land by Bristlecone was approved for sale many years ago, there were new people in the neighborhood who had the right to know what action the Council was going to take regarding the streets. He said it was important to have a median on Bristlecone for safety reasons. He said there were many children in the area and the street should have a median. He reminded Mayor McManus and Council that they represent the citizens and not themselves.

Judith Hoskins stated that citizens voted for Council to make decisions. She stated people should not be so sensitive.

21. City Council's Report

Council Member Bridges stated she went to the Southern Nevada Water Authority Meeting and they approved the assistance agreement with the Bureau of Reclamation to receive funding for the Water Smart Landscape Rebate Program. She stated they also discussed the gallons of effluent that goes into the desert and how they can assist Boulder City to return the effluent to the lake.

Council Member Adams reported that the next Southern Nevada Health District meeting was Thursday. He added that if anybody wants to reach out to him with comments, he can be contacted via email at jadams@bcnv.org or phone 702.930.4685. He thanked everyone for the birthday wishes.

Mayor McManus noted they all have email address on the City website and are willing to speak with people about concerns they have. He noted that Council Member Harhay was not present for health reasons and asked for people's thoughts and prayers in his behalf.

There being no further business to come before the Council, Mayor McManus adjourned the meeting at 10:19 p.m.

Kiernan McManus, Mayor

ATTEST:

Lorene Krumm, City Clerk

EXHIBIT “16”

Noah Allison

Subject: FW: FW: OML Complaint Response

From: Steven Morris <SMorris@bcnv.org>
Sent: Thursday, January 9, 2020 5:58 PM
To: Al Noyola <ANoyola@bcnv.org>
Cc: Lorene Krumm <LKrumm@bcnv.org>; Lauren Oliver <LOliver@bcnv.org>
Subject: OML Complaint Response

Mayor McManus and Members of Council,

Each of you have been blind copied on this correspondence which has also been sent to our City Manager, City Clerk and my Paralegal. I have received several inquiries from various members of council since my email dated Monday, December 30, 2019 regarding the correspondence from the Office of the Attorney General (OAG) dated December 23, 2019. These inquiries regard issues that I believe that all of you should be aware of so I have prepared this correspondence in an effort to provide responses to the requests that I have received. To the extent that there are additional questions or concerns that are not answered by way of this correspondence, as always I encourage you to visit with me personally regarding those concerns.

Before I address the OML Complaint and the request by the OAG that I prepare a response to the allegations contained in the complaint, including any records or documentation that support the response, I want to make it clearly known to all of you that it is my sincere desire that no Member of Council is ever found to have violated the OML during my watch. I believe such a finding reflects poorly on both Council and Staff, even when we have reason to believe it is unwarranted. You should also know that I will always err on the side of caution and transparency in my interpretation of the OML. While this approach may lead to disagreement, it is done with the desire and intent to not only comply with the letter of the law, but the spirit of the law as well.

As you all know, the Office of the Attorney General is required to investigate and prosecute violations of the OML. The Office of the Attorney General, and any person denied a right conferred under the OML, may sue in District Court to void any action taken in violation of the OML within 60 days after the action was taken, or may sue to require compliance with the OML within 120 days after the action objected to was taken. Hence, the requirement by the OAG to respond on or before January 23, 2020.

As the legal adviser of the Council, meaning that I represent the Council as a whole, it has never been my intention to represent any individual council members in this matter. This is precisely why I have requested that

each individual council member provide any comments, records or documentation that you would like to include in the response that I intend to prepare and circulate to Council prior to its submission to the OAG. Please understand that this is an open investigation by the OAG, and as such certain aspects are deemed confidential by the OAG. To the extent that any Member of Council takes issue with the facts, as alleged in the complaint, you have the opportunity to provide your own narrative of those facts to be considered by the OAG. I simply ask that you provide your narrative and any additional documents you deem relevant no later than Monday, January 20, 2020. Due to fact that the allegations in the complaint are against individual Members of Council I will not share any individual narratives with any other Member of Council. The only response that each of you will see prior to submission to the OAG will be my own. You will have an opportunity to review and comment on my response before it is submitted to the OAG. Please be advised that the response should focus on the facts as alleged in the complaint. In other words, the response is not like a motion where the attorney is presenting legal arguments on behalf of their client but rather a narrative of any facts or supporting documents that are disputed or not found in the complaint that are relevant to the determination of the OAG.

I have received some questions about the process once a complaint is filed with the OAG. That process is set forth below in NRS 241.039.

NRS 241.039 Complaints; enforcement by Attorney General; confidentiality of information compiled during investigation; subpoenas; penalty for failure or refusal to comply with subpoena; exception for public records; completion of investigation.

1. A complaint that alleges a violation of this chapter may be filed with the Office of the Attorney General. The Office of the Attorney General shall notify a public body identified in a complaint of the alleged violation not more than 14 days after the complaint is filed.

2. Except as otherwise provided in subsection 3 and NRS 241.0365, the Attorney General:

(a) Shall investigate and prosecute any violation of this chapter alleged in a complaint filed not later than 120 days after the alleged violation with the Office of the Attorney General.

(b) Except as otherwise provided in paragraph (c), shall not investigate and prosecute any violation of this chapter alleged in a complaint filed with the Office of the Attorney General later than 120 days after the alleged violation.

(c) May, at his or her discretion, investigate and prosecute any violation of this chapter alleged in a complaint filed more than 120 days after the alleged violation with the Office of the Attorney General if:

(1) The alleged violation was not discoverable at the time that the alleged violation occurred; and

(2) The complaint is filed not more than 1 year after the alleged violation with the Office of the Attorney General.

3. The Attorney General is not required to investigate or prosecute any alleged violation of this chapter if the Attorney General determines that the interests of the person who filed the complaint are not significantly affected by the action of the public body that is alleged to violate this chapter. For purposes of this subsection, the interests of the person who filed the complaint are not significantly affected by the action of the public body that is alleged to violate this chapter unless:

(a) The person who filed the complaint would have standing to challenge the action of the public body in a court of law;
or

(b) The person who filed the complaint:

(1) Is a natural person and resides within the geographic area over which the public body has jurisdiction; or

(2) Is any form of business, a social organization, a labor organization or any other nongovernmental legal entity in this State that has a mission or purpose to foster or protect democratic principles or promote transparency in government.

4. Except as otherwise provided in subsection 7 and NRS 239.0115, all documents and other information compiled as a result of an investigation conducted pursuant to subsection 2 are confidential until the investigation is closed.

5. In any investigation conducted pursuant to subsection 2, the Attorney General may issue subpoenas for the production of any relevant documents, records or materials.

6. A person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor.

7. The following are public records:

(a) A complaint filed pursuant to subsection 1.

(b) Every finding of fact or conclusion of law made by the Attorney General relating to a complaint filed pursuant to subsection 1.

(c) Any document or information compiled as a result of an investigation conducted pursuant to subsection 2 that may be requested pursuant to NRS 239.0107 from a governmental entity other than the Office of the Attorney General.

8. Upon completion of an investigation conducted pursuant to subsection 2, the Attorney General shall inform the public body that is the subject of the investigation and issue, as applicable:

(a) A finding that no violation of this chapter occurred; or

(b) A finding that a violation of this chapter occurred, along with findings of fact and conclusions of law that support the finding that a violation of this chapter occurred.

9. A public body or, if authorized by the public body, an attorney employed or retained by the public body, shall submit a response to the Attorney General not later than 30 days after receipt of any finding that the public body violated this chapter. If the Attorney General does not receive a response within 30 days after receipt of the finding, it shall be deemed that the public body disagrees with the finding of the Attorney General.

(Added to NRS by 2011, 2384; A 2013, 734; 2015, 1061; 2019, 3627)

In the event that a violation of the OML is found by the OAG the following section would apply with respect to the acknowledgment of the findings of fact and conclusions of law on the next agenda posted by the public body:

NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

1. If the Attorney General makes findings of fact and conclusions of law that a public body has violated any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the existence of the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

2. The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.

(Added to NRS by 2011, 2384; A 2019, 3628)

In the event that a willful violation of the OML occurs the following sections would apply:

NRS 241.040 Criminal and civil penalties; members attending meeting in violation of chapter not accomplices; reliance on legal advice.

1. Except as otherwise provided in subsection 6, each member of a public body who attends a meeting of that public body where any violation of this chapter occurs, has knowledge of the violation and participates in the violation, is guilty of a misdemeanor.

2. Except as otherwise provided in subsection 6, wrongful exclusion of any person or persons from a meeting is a misdemeanor.

3. A member of a public body who attends a meeting of that public body at which a violation of this chapter occurs is not the accomplice of any other member so attending.

4. Except as otherwise provided in subsection 6, in addition to any criminal penalty imposed pursuant to this section, each member of a public body who attends a meeting of that public body where any violation of this chapter occurs and who participates in such violation with knowledge of the violation, is subject to an administrative fine in an amount not to exceed:

- (a) For a first offense, \$500;
- (b) For a second offense, \$1,000; and
- (c) For a third or subsequent offense, \$2,500.

5. The Attorney General may recover the penalty in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction. Such an action must be commenced within 1 year after the fine is assessed.

6. No criminal penalty or administrative fine may be imposed upon a member of a public body pursuant to this section if a member of a public body violates a provision of this chapter as a result of legal advice provided by an attorney employed or retained by the public body.

(Added to NRS by 1960, 26; A 1977, 1100; 1983, 1013; 2011, 2390; 2019, 3628)

NRS 283.040 Events causing vacancy in office; action by Attorney General or district attorney.

1. Every office becomes vacant upon the occurring of any of the following events before the expiration of the term:

- (a) The death or resignation of the incumbent.
- (b) The removal of the incumbent from office.
- (c) The confirmed insanity of the incumbent, found by a court of competent jurisdiction.

(d) A conviction of the incumbent of any felony or offense involving a violation of the incumbent's official oath or bond or a violation of NRS 241.040, 293.1755 or 293C.200.

...

As you can see, the statutory language set forth above is why I will always error on the side of caution and why the safe harbor set forth in paragraph 6 of NRS 241.040 is so important. While I don't represent individual Members of Council it is my desire to assist you with any questions or concerns that you may have about this process and the response to the OAG. I look forward to receiving any narratives or documents that you would like included in the response to the OAG by Monday, January 20, 2020.

Best regards,

Steve



Steven L. Morris, Esq.

City Attorney

City of Boulder City | www.bcnv.org

401 California Ave., Boulder City NV 89005

E: SMorris@bcnv.org | P: 702.293.9238 | F: 702.293.9438

EXHIBIT “17”

Nevada Commission on Ethics
 Case No. _____
 For Official Use Only



NEVADA COMMISSION ON ETHICS
ETHICS COMPLAINT
NRS 281A.700 to 281A.790

1. **SUBJECT OF THE COMPLAINT** (person you allege violated provisions of NRS Chapter 281A, the Nevada Ethics in Government Law. *(Please use a separate form for each individual.)*)

Subject NAME:	Steven Morris		TITLE OF PUBLIC OFFICE: <small>(Position)</small>	City Attorney
PUBLIC ENTITY: <small>(Name of the entity employing this position)</small>	City of Boulder City			
ADDRESS:	401 California Avenue	CITY, STATE, ZIP CODE	Boulder City, NV 89005	
TELEPHONE:	<small>Work:</small> 702-2939238	<small>Other: (home, cell)</small>	EMAIL:	SMorris@bcnv.org

2. Describe the alleged conduct of the public officer or employee (subject) that you believe violated NRS Chapter 281A. *(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 Letter and Exhibits.

3. Is the alleged conduct currently pending before another administrative, law enforcement or judicial body? If yes, describe:

Yes. The AG's Office regarding an Open Meeting Law Complaint, OAG File No. 13897-354. See attached Letter and Exhibits.

4. NRS Chapter 281A requires public officers and employees to hold public office as a public trust and avoid conflicts between public duties and private interests. (NRS 281A.020) What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Statutory Summary:
<input type="checkbox"/>	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity for himself or person to whom he has a commitment in a private capacity 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.
<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 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.
<input type="checkbox"/>	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for himself or any person to whom he has a commitment in a private capacity for the performance of his duties as a public officer or employee.
<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 or the interests of any person to whom he has a commitment in a private capacity.
<input type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his significant personal or pecuniary interest, or any person to whom he has a commitment in a private capacity. (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 pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Representing or counseling a private person for compensation on an issue pending before a public agency while employed, or within 1 year after leaving the service of a public agency, including before any state agency of the Executive or Legislative Department. (State and local legislators and part-time public officers and employees may represent/counsel private persons before agencies they do not serve, except local legislators may not represent/counsel private persons before other local agencies within the same county.)
<input checked="" type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceeding year that is reasonably affected by an official matter.
<input checked="" type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.
<input type="checkbox"/>	NRS 281A.430	Bidding on or entering into a government contract in which he has a significant pecuniary interest. (Some exceptions apply).
<input type="checkbox"/>	NRS 281A.500	Failing to file or timely file a Nevada Acknowledgment of Ethical Standards for Public Officers form.
<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.
<input type="checkbox"/>	NRS 281A.550	Negotiating or accepting employment from a business or industry regulated by or contracted with former public agency within one year after leaving service of the agency. (Failing to honor the one-year "cooling off" period after leaving public service, exceptions).

*Pursuant to NRS 281A.065, a public officer or employee has a commitment in a private capacity to the following persons/entities:

1. Spouse; domestic partner.
2. Household member.
3. Family member within 3rd degree of consanguinity/affinity.
4. Employer or spouse/domestic partner/household member's employer.
5. Substantial and continuing business relationships, i.e. partner, associate, or business entity.
6. Substantially similar relationships to those listed above, including close, personal relationships akin to family and fiduciary relationships to business entities.

5. **YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS.** (NRS 281A.710 through 281A.715.)
Attach all documents or items you believe support your allegations, including witness statements, public or private records, audio or visual recordings, documents, exhibits, concrete objects, or other forms of proof.

State the total number of additional pages attached (including evidence) _____:

6. Witnesses: Identify 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)	Mayor Kiernan McManus		
ADDRESS:	401 California Avenue	CITY, STATE, ZIP	Boulder City, NV 89005
TELEPHONE:	Work: 702-933-4444 (Counsel)	Other: (Home, cell)	E-MAIL: noah@allisonnevada.com
NATURE OF TESTIMONY:	See attached Letter and Exhibits.		
NAME and TITLE: (Person #2)	Council Member Tracy Folda		
ADDRESS:	401 California Avenue	CITY, STATE, ZIP	Boulder City, NV 89005
TELEPHONE:	Work: 702-933-4444 (Counsel)	Other: (Home, cell)	E-MAIL: noah@allisonnevada.com
NATURE OF TESTIMONY:	See attached Letter and Exhibits.		

7. REQUESTER INFORMATION:

YOUR NAME:	Noah G. Allison, Esq. on behalf of Kiernan McManus and Tracy Folda		
YOUR ADDRESS:	3191 East Warm Springs Rd.	CITY, STATE, ZIP:	Las Vegas, NV 89120
YOUR TELEPHONE:	Day: 702-933-4444	Evening: 702-501-5472	E-MAIL: noah@allisonnevada.com

Your identity as the Requester will be provided to the Subject if the Commission accepts jurisdiction of this matter, unless:

Pursuant to NRS 281A.750, I request that my identity as the requester of this Ethics Complaint remain confidential because (please check appropriate box):

I am a public officer or employee who works for the same public body, agency or employer as the subject of this Ethics Complaint. Provide evidence in the text box below, or as an attachment, of your employment with the same public body, agency or employer.

OR

I can show a reasonable likelihood that disclosure of my identity will subject me or a member of my household to a bona fide threat of physical force or violence. Describe in the text box below, or in an attachment, the facts and circumstances that support a reasonable likelihood of a bona fide threat of physical force or violence.

A copy of this Complaint will be provided to the Subject. If your request for confidentiality is approved by the Commission, the Complaint will be redacted to protect your identity as the Requester. The Commission may decline to maintain the confidentiality of your identity as the Requester for lack of sufficient evidence of your employment status with the same public body, agency or employer, or proof of a bona fide threat of physical force or violence.

If the Commission declines to maintain my confidentiality, I wish to:

- Withdraw my Complaint OR
- Submit the Complaint understanding that the Subject will know my identity as the Requester.

By my signature below, I 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 regarding these allegations. I acknowledge that this Ethics Complaint, the materials submitted in support of the allegations, and the Commission's investigation are confidential unless and until the Commission's Review Panel renders a determination. Certain Commission proceedings and materials, including the Investigatory File remain confidential pursuant to NRS 281A.750 through 281A.760.



 Signature:

Jan. 23, 2020

 Date:

Noah G. Allison

 Print Name:

You may file a Complaint using the Commission's **online form** submission at ethics.nv.gov (Preferred) or You must submit this form bearing your signature to the Executive Director via:
delivery/mail to Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City, Nevada, 89703,
email to NCOE@ethics.nv.gov, or **fax** to (775) 687-1279



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Steven Morris**, City Attorney,
City of Boulder City, State of Nevada,

Ethics Complaint
Case No. 20-007C
Confidential

Subject. /

ORDER ON JURISDICTION AND INVESTIGATION
Pursuant to NRS 281A.715

The Nevada Commission on Ethics ("Commission") received an Ethics Complaint on January 23, 2020, regarding Steven Morris ("Subject"), City Attorney, City of Boulder City, State of Nevada, alleging that the Subject failed to disclose and abstain on advising the Boulder City Council in a matter affecting the Subject's pecuniary interest in violation of NRS 281A.420(1) and (3). On March 9, 2020, pursuant to the requirements of the Nevada Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law") and NAC 281A.400, the Commission conducted its jurisdictional and evidentiary review of the record, including the Ethics Complaint, supporting evidence, and the recommendation of the Executive Director.

IT IS HEREBY ORDERED:

The Commission accepts jurisdiction of this Ethics Complaint and, based upon sufficient evidence to support the allegations, directs the Executive Director to conduct an investigation regarding Subject's alleged violations of the following provisions of the Ethics Law:

- NRS 281A.420(1)** Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person that is reasonably affected by an official matter.
- NRS 281A.420(3)** Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.

The Commission further directs the Executive Director to serve this order with a Notice of Complaint and Investigation as required by NRS 281A.720.

DATED this 9th day of March, 2020.

NEVADA COMMISSION ON ETHICS

/s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Commission Chair

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing, via U.S. Postal Service, certified mail, return receipt requested, through the State of Nevada mailroom, a true and correct copy of the foregoing **Order on Jurisdiction and Investigation**, addressed as follows:

Steven Morris
City of Boulder City
401 California Avenue
Boulder City, Nevada 89005

Cert. Mail No.: 9171 9690 0935 0037 6386 93

Dated: 3/9/20



Employee, Nevada Commission on Ethics



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Steven Morris**, City Attorney,
City of Boulder City, State of Nevada,

Ethics Complaint
Case No. 20-007C

Subject. /

REVIEW PANEL DETERMINATION AND REFERRAL ORDER

NRS 281A.730; NAC 281A.440

The Nevada Commission on Ethics (“Commission”) received Ethics Complaint No. 20-007C on January 23, 2020, regarding the alleged conduct of Steven Morris (“Morris”), City Attorney, City of Boulder City, State of Nevada. On March 9, 2020, the Commission instructed the Executive Director to investigate alleged violations of NRS 281A.420(1) and (3).

Morris is a public officer as defined in NRS 281A.160, and the Commission has jurisdiction over this matter pursuant to NRS 281A.280 because the allegations contained in the Complaint relate to Morris’ conduct as a public officer and have associated implications under the Ethics Law.

On May 20, 2020, a Review Panel (“Panel”) consisting of Commissioners Barbara Gruenewald, Esq. (Presiding Officer), Brian Duffrin and Amanda Yen, Esq. reviewed the following: (1) Ethics Complaint No 20-007C (2) Order on Jurisdiction and Investigation in Ethics Complaint No. 20-007C; (3) Morris’ Response to the Complaint; and (4) Executive Director’s Recommendation to the Review Panel with Summary of Investigatory Findings.¹

Under NAC 281A.430, the Panel unanimously finds and concludes that the facts establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the alleged violations of NRS 281A.420(1) and (3).

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¹All materials provided to the Panel, except the Ethics Complaint and the Order on Jurisdiction and Investigation, represent portions of the investigatory file and remain confidential pursuant to NRS 281A.750.

IT IS HEREBY ORDERED:

Based upon the just and sufficient cause determination, the Review Panel refers Ethics Complaint No. 20-007C to the Commission to render an opinion regarding whether Morris violated NRS 281A.420(1) and (3) through his alleged failure to disclose and abstain from acting on a City Council of Boulder City agenda item concerning his contract as City Attorney.

Dated this 20th day of May, 2020.

NEVADA COMMISSION ON ETHICS

By: /s/ Barbara Gruenewald
Cheryl A. Lau, Esq.
Chair/Presiding Officer

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the foregoing **PANEL DETERMINATION** via U.S. Certified Mail and electronic mail addressed as follows:

Steven Morris
c/o Brian R. Hardy, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

Certified Mail No.:

Email: bhardy@maclaw.com

Dated: 5/20/20

Employee, Nevada Commission on Ethics



**STATE OF NEVADA
COMMISSION ON ETHICS**
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
ethics.nv.gov

In re **Steven Morris**, City Attorney,
City of Boulder City,
State of Nevada,

Ethics Complaint
Case No.20-007C

_____ Subject. /

WAIVER OF STATUTORY TIME REQUIREMENTS: ADJUDICATORY HEARING

INITIAL
SM

I, Steven Morris, the above Subject, affirm that I am represented by counsel and have read the provisions of NRS 281A.745 and hereby freely and voluntarily waive the sixty (60) day statutory time limit for the Commission to hold the adjudicatory hearing and render an opinion in this matter on any date which is hereafter agreed to by my counsel of record or set forth in a Notice of Hearing and Scheduling Order issued in these proceedings.

Dated: 6-2-20

Steven Morris

Steven Morris

Date received: 6/2/20

Darcie Hayes

Employee of the Commission



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Steven Morris**, City Attorney,
City of Boulder City,
State of Nevada,

Ethics Complaint
Case No.20-007C

Subject. /

**WAIVER OF NOTICE REQUIRED UNDER NRS 241.033(1) TO
CONSIDER CHARACTER, MISCONDUCT, OR COMPETENCE
OF SUBJECT IN ETHICS COMPLAINT PROCEEDINGS**

The Nevada Commission on Ethics ("Commission") may be holding various hearings, meetings, judicial review or appellate proceedings and other proceedings to consider the Subject's character, misconduct or competence as related to the above referenced Consolidated Ethics Complaints (collectively "Proceedings"). If the Proceedings are not exempt from Nevada's Open Meeting Law pursuant to NRS Chapters 241 or 281A, NRS 241.033(1) requires notice be personally served on Subject of the time and place of the meeting at least 5 working days before the meeting or sent by certified mail to the last known address at least 21 working days before the meeting. Subject agrees to comply with all noticed deadlines and scheduled dates for the Proceedings, including those noticed by a posted public agenda, scheduled with the parties or set forth in a Notice of Hearing and Scheduling Order and other issued Orders, including any amendments thereto.

I, Steven Morris, understand the statutory notice requirements of NRS 241.033 and hereby knowingly and voluntarily waive my rights thereto associated with any Proceedings. In doing so, I expressly consent to any discussion of my qualifications, competence and character in the Proceedings. Prior to signing this waiver, I either had the opportunity to discuss this matter with my attorney or have voluntarily determined to proceed on my own accord, thereby waiving the right to consult with an attorney.

Dated this 6th day of August, 2020.

By: 
Steven Morris