

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

SS March 18, 2014

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 5:00 p.m., Tuesday, March 18, 2014.

This meeting was called to order by Mayor Chris Johnson.

NOTE: The order of the Agenda has been changed to reflect the order business was conducted.

Mayor Present: Chris J. Johnson

Council Present: Councilman John Rice
Councilwoman Mandy Simons
Councilman Robert Schmidlein
Councilman Reece Keener

City Staff Present: Curtis Calder, City Manager
Delmo Andreozzi, Assistant City Manager
Shanell Owen, City Clerk
Jeremy Draper, Civil Engineer
Matt Griego, Fire Chief
Ben Mangeng, Information Systems Manager
Ben Reed Jr., Police Chief
Aaron Hildreth, Police Patrol III
Dave Stanton, City Attorney
Diann Byington, Recording Secretary

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

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

Gil Hernandez said on March 2nd he flew to Washington DC but when he went to the parking facility at the Airport he couldn't get in. He wants someone to make sure and check the ticket stubs on a regular basis. Just before his flight was called someone finally came down and got the thing working. He wasn't sure what he would have done if he was not able to park before his flight.

Councilwoman Simons said the Airport is aware of the problem and they are looking into solutions.

I. SPECIAL WORKSHOP

- A. Discussion of possible measures to improve public health, safety, and welfare in the Humboldt River Corridor area of the City of Elko, including possible direction to Staff regarding ongoing citizen concerns, sanitation issues, park maintenance activities, emergency service accessibility, illegal conduct, law enforcement, and matters related thereto. **FOR POSSIBLE ACTION**

Curtis Calder, City Manager, said the agenda item was written to be very broad. A lot of different issues can be discussed. It is the pleasure of the council as to how they want to approach this item.

Councilman Schmidlein disclosed that one of the proposed city sites being selected; he doesn't have a conflict or any harm being done but his partner with Canyon is the owner of the Elko Geo Park. He doesn't feel that would cause him any harm to make a decision tonight.

Mayor Johnson said NRS 281(a) requires him to disclose a conflict of interest. The matter before this body in designating a ten acre parcel next to or close to RAM Enterprises affects his commitment in a private capacity to the interests of RAM who at times is a customer of his company. In fact, tomorrow, he will be submitting a bid to them for a Barrick office expansion. At this point, assuming that no matter how the City Council votes that although that decision may not be supported by RAM; with his assumption at hand, he does not believe this will be a financial burden to them and would not materially affect his relationship and because it is not a clear case of disqualifying conflict of interest, he will be voting on this matter. This disclosure would apply with both items, A and B, on this agenda.

John Schmidt, Pastor Cornerstone Baptist Church, handed out and read his comments to council (Exhibit "A"). Option D (talks about a designated property or properties that the city owns or similar to what we have discussed already and then providing services on those properties) is missing from his notes which is one of the options he recommended.

Chris (refused his last name) said he works with the homeless on a regular basis. He didn't think a walk thru was going to be a good idea. He has built a strong relationship with the homeless down in the river area over the last 6 months and if anyone would like to go with him he was sure the homeless wouldn't have a problem with that. You can build a "Tent City" but will they come? The citizens of Elko that this Tent City is being designated for are not homeless. A number of them have been in the same spot for two or more years. The average time of residence is a bit over a year. Just because their homes are portable and made of plastic or fabric does not mean they are not homes afforded the same worth and 14th Amendment protection as the homes made of brick or wood. The same protection is afforded their dogs and possessions. He offered *Lavan vs. the City of Los Angeles (Case No. 11-56253 9th Circuit Court, February 8, 2012)* as an example. Home is not necessarily a shelter. A shelter has the ability to protect a person from wind, rain and snow. A tent is not adequate. From having read the minutes of a council meeting where a Tent City was discussed, the only conclusion that could be surmised is that the object of the Tent City is to move our most impoverished citizens from one piece of dirt

to a worse piece of dirt. He has also heard snippets of Boise being tossed around as justification. If this is in fact reference to *Bell vs. City of Boise (Case No. 11-35674 9th Circuit Court, March 7, 2013)*, language inside within states the person is illegally camping if shelter space is available. That is a shelter with four walls and a roof. Not a designated piece of dirt. Elko does not have a shelter. Incidentally, as contained in the language in *Bell vs. City of Boise*, the court urged the plaintiffs to file an amended complaint. The city designates an open field as a Tent City. Does the city mean to enforce no camping ordinances upon completion of Tent City thereby forcing people to move or face arrest? Again, look at the language contained in *Lavan vs. City of Los Angeles*. The city can do anything they want or try to get away with, but a tent city isn't going to fly very far. If a community of individuals decides to embrace the idea, then I would hope that the city would assist but that would be relevant only to those individuals and anyone who would want to join them. It's not a question of a city establishing a Tent City; it's a question of where a city is trying to get rid of it. He couldn't find any references where a city was in support of situation such as a tent city. Listen to our City Attorney. During a recent council meeting, Dave Stanton, City Attorney, said the issue of laws concerning activities taking place such as littering and public urination in terms of what we can and cannot enforce, the key thing is that we cannot criminalize homelessness but we cannot also criminalize life sustaining activities. If it something that someone needs to do in order to live and there is no alternative available to them then that cannot be criminalized. Just because something cannot be enforced in no way means that something cannot be done about it. A better solution would be to start with something simple like 5-10 portable toilets and 5 dumpsters strategically placed along the river corridor. Initially, there would be a need for the same number of 40 yard boxes to allow for initial cleanup. The guys down there are willing to do that. It is something that has built up over time and it is just like cleaning out your garage. What Elko really needs is an actual 50 bed plus 2 family unit self-contained homeless shelter built with public funds under the McKinney-Vento Homeless Assistance Act of 1987 and signed into law by Ronald Reagan. CDBG grants and private funding from sources such as Joshua Tree. The means are available.

Charlie Myers, 560 Bullion, said this is a difficult decision. Homelessness can be a choice. It is unfortunate for the people that live on Bullion Road because there is so much city property down there to select. The conditions are atrocious and it isn't all caused by the homeless. He went down there and found all sorts of trash and stuff that did not come from the homeless. Locations for this need to be away from homes; a location with the ability to have water and possibly even restrooms. You need to make a decision tonight.

Kenneth Martsolf, 403 W. Bullion, said he has an expectation as a citizen to believe that the laws and social standards will be enforced equally throughout the community. Less than 1% of our population is dictating how we enforce our laws. The Council is generous and gracious to offer this place for overnight camping and providing them potable water, waste bins and a place for human waste. This will allow the service non-profits to do things the right way. All he would like to see the city do is secure his investment in this community and ensure that when he visits everything will be treated on a fair and equal basis and not because of a certain social standard. (Exhibit "B")

Mike Lattin, 3250 W. Idaho Street, thought the gentleman before him hit the nail on the head. This is an issue of rights. The homeless problem has gotten out of control. This is a result of the city has not enforcing laws and ordinances. It has come to the point where we need to make some changes. He doesn't think the proposal that Mr. Andreozzi came up with will work. His

plan puts the burden on one neighborhood south of the river near schools and places where kids are playing. People are trying to raise families out there. Why don't we look at other sites? You need to look at other options for locating this. Property values are going to go down. These people work to develop a nice home to raise a family in. Everyone deserves the same considerations. We are all citizens and deserve the same protection from the government.

Randall Davis, 700 Commercial Street, has spoken before council in the past. When he first came to town he had the opportunity to go and open up the VFW during a very cold night. He ran into a young woman that had a child with her and was hitchhiking to California. Finally a social worker got her a ticket to get her to her destination. There are people here that were strapped and trying to get out of the state. We need to look at who is stranded and wants out of town.

Frankie Dixon, 602 S. 3rd Street, said he grew up in this area indicated on the screen. He only has one issue and that is that access to the river has been blocked off. You can't get to the river due to camps, trash, needles and other things in the way. There are kids in that area that cannot get to the river.

Celcia Dixon, 602 S. 3rd Street, felt that the homeless have rights too. She jogs down there every day and she has kids. There is good and bad in all of us and we need to look out for them.

John Ellison, 438 S. 5th and 461 S. 9th, lives in the Southside or the redevelopment area. If he goes outside and pees on the ground, will he go to jail? (yes) These guys are not going to jail. He helps anyone that is cold and hungry that needs help. The problem is out of hand and you keep dumping your trash on the Southside. If we are going to move things then move them to the train park. You have to stop and think about what you are doing. Every day he has to call the police because something is going on. It's a bad idea to dump these people in an area near a school. If they are all put together in one place they will all fight. He got a call today from the Railroad and they will be meeting in his office tomorrow at 9:00 am. He thought the parcel behind Gateway RV was a good place.

Gary Reese, Underdog Street Ministries, 252 Cliff Place, Spring Creek, said the difference between someone who has a home and pees on a street is that they have a home. Someone living in a tent doesn't have a home to pee in. He was shocked that the Mayor brought up at the last discussion about what is going on in Utah and it was a breath of fresh air and it shows true leadership. It is the most economical solution for ending homelessness. Tent city is not a solution to anything. He and his wife visited a tent city in Seattle. They realized it wasn't a viable solution for this community. You have tent cities that are created and governed by homeless people. We don't have that here. He did find where cities were supportive of tent cities but they never came to fruition. He doesn't think a tent city will help. He knew of a survey where 13 out of 30 said they would go to a tent city. He is down in the river area every day. No one wants to go to a tent city. It will cause problems. Every homeless population is unique. This seems to be a hot topic and since it is an election year we have candidates saying they are going to fix this. This is a complicated issue and it can't be fixed easily. Homelessness is not a crime; it is an injustice. We need to look at these people as human beings. He wasn't sure what a true long-term solution would be. A short-term solution would be a shelter. He agreed that the river is a mess. His group has talked about cleaning up the mess down there and said they are working on and committed to cleaning it up.

Councilman Rice said he was wondering what action needs to happen. It sounds like Mr. Reese is advocating for leaving it the way it is.

Mr. Reese said he wasn't sure. He doesn't see the benefit for designating an area to put them all in and felt it would complicate matters more.

Councilman Rice asked what Underdog does.

Mr. Reese answered they do everything. They buy motel rooms and open shelters at the VFW. They provide people with propane and pick up their trash. They build relationships with people and love them.

Joyce Ellison, 445 South 7th Street, has an apartment building on the Southside. No one wants to stay there due to being located on the Southside of town and close to the river. She grew up here. People who want to leave, the county offers a ticket for those that want to leave. There is also a house for people in dire need. She hasn't seen very many people in that house. They have to want to go there. She doesn't know what the solution is either.

Susan Martsolf, FISH, said 47 S. 5th is a shelter but it is at capacity every night. In her opinion people are squatting along the river. It is a horrible offense to the rest of the public. She cares about the homeless and helps them every day. She does want to see an area set aside for temporary overnight camping. A temporary solution such as temporary overnight camping in a designated area will give us the opportunity to work on a permanent solution.

Councilwoman Simons asked who owns the parcel next to FISH.

Ms. Martsolf answered Barry and Dins Lipparelli. It would be wonderful if we owned the whole block and it would solve some problems.

Councilman Keener asked how is the Samaritan House funded.

Ms. Martsolf answered through Emergency Shelter Grant and the State of Nevada.

Susan Thornburg, 4211 W. Bullion, Gateway RV, said she picks someone up from in front of FISH and she employs him. He tells her how strict the rules are at Samaritan House. All small businesses should step up and do their part. She wants these homeless held accountable. In her opinion, Susan Martsolf needs to be out at the designated ten acres to control the situation.

Jennifer Kidwell, 2095 Colonial Drive, Joshua Tree Shelter, said the Point-In-Time number for this year was between 80 and 90. Samaritan House is full and they house 20 people. Joshua Tree is looking to house 50. They just acquired some land. In her opinion there is a separation between homeless and drug & alcohol problems. Two years ago the problem in the corridor seemed to be about alcohol and drugs with the homeless falling secondary to that. There were homeless in the park drinking alcohol so the problem seemed to become combined. There are two separate issues. She asked Larry Hire about a pilot program that is assisting homeless.

Larry Hire, 245 Ash Street, talked about an experiment (pilot program) and he wasn't sure who was sponsoring it. There is a homeless veteran that Mr. Hire drives to Salt Lake City to the VA Hospital. He was put into an apartment here on a trial basis. He has certain things he is supposed to do such as get a job and no drinking.

Ms. Kidwell noted if it is successful then that would be great. FISH has done great things over the years. She is torn with the land and stuff. Bussing out of the area doesn't work.

Abby Wheeler, Elko County, asked where is that parcel of land for Joshua Tree.

Ms. Kidwell answered off 12th as you are coming over the 12th Street Bridge on the left side towards the gravel pit.

Councilman Rice said at our last meeting we were presented with an inventory of possible places for overnight camping. Is this a piece of property that can be included in that inventory?

Ms. Kidwell answered no because of the development that will be going on.

Mr. Martsolf said he didn't understand why entitlement keeps coming up. There needs to be some accountability that the user has to provide. Entitlements won't cure the problem but rather make the problem get bigger. If the homeless know they can live here and nothing is expected but to live here the population is going to grow. They need to know they are expected to volunteer for civic projects or attend anger management course and show some accountability. With life comes responsibility.

Gil Hernandez, 1316 7th Street, said you have a big job. He felt there are laws on the books that action can and should be taken on. The homeless is going to always be here. The homeless along the river can be enforced just like you enforce the laws for the rest of us that live in the community. We aren't trying to dump everything on the Southside; these people took it upon themselves to move into that area because it was a prime location. His suggestion is to put signs up to keep people from camping along the river. We have to make a decision and stick to it.

Jim Ellison said you can't put them people in our backyard. We are scared of them. He was at the river and watched the drunken hobos harass some people trying to walk along the river walkway. We need to find somewhere to put them but moving them into his backyard is not a good deal. The river is a mess.

Ms. Thornburg asked that there will be something from the council that this move will be temporary and that someone will go and check on the facility and take an active part to try to make people be responsible. She asked how long until Joshua Tree opens? When Joshua Tree opens this temporary overnight camping location should be closed.

Ms. Kidwell said she is working as fast as she can and did not have a timeline.

Ms. Martsolf, FISH, said we do need that dedicated overnight camping and FISH will take on responsibility for the accountability. They will take that on and figure it out.

Councilman Rice said we have had a considerable amount of good public comment. He wants to close the public comment period but be open to ask questions so they can start making progress on the agenda program.

Mayor Johnson was in favor of the city allocating dumpsters in the area and then begin addressing the cleanup.

Councilman Keener favored the location that does the least harm. When we gathered last time we were given just one location for consideration...

Mayor Johnson interrupted Councilman Keener because that pertained to item B.

Councilwoman Simons noted her comments would also cover both agenda items.

The decision was made that both items should be discussed together and Mayor Johnson read Item B into the record.

- B. Review, consideration, and possible action to designate a parcel of City-owned land for the purposes of allowing overnight camping, and matters related thereto.
FOR POSSIBLE ACTION

The City has been studying possible measures to improve public health, safety and welfare by amending Code Sections contained in Title 5 relative to conduct on and use of public and private property within the City, to include overnight camping without permission and various types of conduct that constitute offenses against the public peace.

At the February 11, 2014 City Council meeting, a motion was made by Councilman Robert Schmidlein, seconded by Councilwoman Mandy Simons, to table the proposed agenda item and call to have it put on a special session in order for Staff to gather additional information. CC

Councilman Keener read his "Homeless Report" (Exhibit "C").

Councilman Rice thought what Councilman Keener said was very thoughtful and he agreed. We need to designate a place for legal overnight camping within city limits. This is a situation that is bigger than the city of Elko. By making such a designation and allowing our ordinances to be enforced by providing an alternative site for folks to go when they can't be in a place we trigger the opportunity for other social services, such as the county and state, to provide more opportunities. Immediately for us it is a health and safety issue in our community. We have to take care of the 87 people who are choosing to live in these places but we also have to take care of the nearly 18,000 people who aren't able to enjoy some of the areas that they wish they could. The current conditions are squalid and we need to act. This will get the ball rolling as far as establishing a timeline. This is a temporary action that will help us a long way down the road to all of the longer term solutions we need to find.

Councilman Schmidlein said we have many issues out there. The public has stepped forward and Councilmen Keener and Rice brought up some great points. He will be in favor of moving

something forward. We are considering this as a temporary solution but how long? What restrictions will be there as we pick the site? In his research he found there are certain steps for categorizing the homeless people. As you move forward and solicit sites you will start to weed out the negative impact of the homeless people. One of the main things is providing shelters. It is not the city's responsibility to provide a shelter, nor will we take the responsibility of it. There are rehab programs for homeless people. We do have health issues and we need to correct that. The corridor is disgusting and embarrassing.

Councilwoman Simons said she had a plan and maybe not a very good plan. If we are just looking for a first step in a temporary solution then ideally we need something close to FISH but north of the river. We don't own land there so it would mean somehow gaining one of those lots next to FISH. That would move them away from the school and address their needs while keeping them close to services. Then we can clean up the river walk and crack down on what is happening there.

Councilman Rice asked Councilwoman Simons what we should do in the meantime.

Councilwoman Simons noted that according to law they have to have another place to go and we do have a shelter. Doesn't that apply?

Mr. Stanton answered it isn't just a matter of having a shelter; it has to be sufficient to accommodate the population that is going to be displaced.

Councilwoman Simons didn't think that any of these sites are suitable. Once Joshua Tree gets up and running maybe we won't even need this land.

Councilman Keener said time is of the essence. There are a lot of tents in between the north bank of the river and the Railroad tracks. If those people are cleared out they will be impacting other areas immediately. If we had a designated place we might have an urgency to start gathering those people to that place sooner than we expect.

Councilman Schmidlein said they will be next to Railroad with the selected site.

Councilman Keener said but they won't be on Railroad property. That is the distinction.

**** A motion was made by Councilman Rice, seconded by Councilman Keener, to direct staff to amend code sections contained in Title 5 relative to conduct and on and use of public and private property in the city to include overnight camping without permission and also those provisions include providing toilet facilities, potable water and fire rings and that the site to be designated be what we have referred to as the Warm Springs Site and that the staff work with FISH to establish guidelines and timelines for conduct at that designated site and also he would expect that FISH would also be working on a plan for people who would choose to stay there to have access to social services provided by the private sector.**

The motion was amended and restated below.

After the motion and before the restated motion, Councilman Keener wanted to add that this come back and look at this in twelve months. In the interim staff can explore other alternatives.

Councilman Rice accepted the addition to his motion.

Councilman Schmidlein wanted the fire rings pulled out.

Councilman Rice pulled out the fire rings. He amended his motion to add life sustaining activities.

Dave Stanton asked for the motion to be rephrased and restated to make it clearer for staff.

**** The motion was restated by Councilman Rice, seconded by Councilman Keener, to amend code sections contained in Title 5, relative to conduct on and use of public property within the city to include overnight camping without permission and that site be exclusive to what we know as, and that those permissions be exclusive to the site we refer to as “Warm Springs” and that it include providing toilet facilities, potable water and other services that address “life sustaining activities” and to work with FISH to establish guidelines and a timeline for this site and guidelines for conduct and also guidelines for access to social services that would be provided by the private sector.**

The motion passed unanimously. (5-0)

After the restated motion and before the vote, Councilman Keener seconded the motion with the understanding that it is a temporary measure and this is something that council will come back and review in twelve months.

Councilman Rice said that is part of the timeline.

Councilman Schmidlein asked does this allow no camping within city limits except the camping site. Does that wording need to be in there?

Mr. Stanton answered no. Early on in the process we started amending other sections in the code dealing with the issue of “Vagrancy.” Part of what we were doing was revising the code to clarify that there is no overnight camping on public property. What we are doing here is making some adjustments to those code revisions in order to carve out this area. Other areas are going to specifically state there is no overnight camping on public property. That process has already begun.

Councilwoman Simons asked if she can make another motion. She wants something that says they can work on getting a piece of property near FISH. She doesn’t want this idea to get forgotten.

Mr. Stanton felt that would fall outside of the scope of how this was agenda’d.

Gil Hernandez, 1316 7th Street, wondered if you will designate that as an area for the homeless as camping and then outlaw the corridor. He wants allowances for the volunteers to make arrangements for the homeless in that area.

Mayor Johnson said this decision was to allow staff to move forward to incorporate and finish the Vagrancy Code. That will be another two step process in itself.

Mike Lattin, 3250 W. Idaho St., complimented council for what they are doing tonight. We have selected the lesser evil of the three alternatives to provide some buffer between Southside, the river and the Railroad. The businesses in the area will have to live with whatever ramifications we incur. He owns one of the businesses in the area and he is willing to do whatever is necessary to make it work. Councilman Rice listed some facilities that are going to be provided. He assumed that the city will provide and pay for those?

Councilman Rice said the motion included the toilet facilities and potable water.

Mr. Lattin added dumpsters for garbage. He thought it should be clear that the city is going to pay for these.

Mr. Andreozzi said he would check with Elko Sanitation about services. The city does have a franchise agreement with them and they do, as part of that agreement, provide dumpster service to many of our facilities. It is very likely that the franchise agreement will be covered without more charge.

Mike Lattin said he felt the city was entering into a landlord/tenant situation with the homeless or FISH as the renter. Will you have a formal contract with FISH for this?

Councilman Rice answered that would be part of the details to be worked out with staff. That was the direction of the motion.

Mr. Lattin suggested a formal agreement and some liability insurance to protect the public on that land. He also thought the motion should include the wording, "This will be done in compliance with all state laws and regulations." It is important that if we are going to build something and develop something we need to comply with all the rules and regulations that come into effect.

Councilman Rice submitted that his direction to staff covered that statement.

Mr. Lattin said he felt the city is always putting the cart in front of the horse and we hear about this due diligence that is going to be done after we make the deal. As a taxpayer he would like to see the deal made and then commit the land to it.

Ken Snyder, 243 W. Oak St., said because this is becoming a designated site that the city does assume responsibility for any damages that may occur on adjacent properties as well.

Councilman Keener thought the city has liability for homeless camping in the corridor now, correct?

Mr. Stanton answered the city could be sued for anything. The problem with liability is when the city gets into the business of operating it. If the city just provides some park area with some basic utilities, there is something called discretionary function where the city makes the decision to do something and that decision is generally protected from suit by statute. The problem area

is when the city gets into the business of operating a facility like this. If this is going to be operated then it's going to be something the city is not doing. The city would have some sort of an agreement with whoever the operator is but the city wouldn't be in that business.

Jeff Williams, Elko County, supported the motion and felt this should be a pilot project for a particular period of time so you can study the good things that have happened, what you need to correct and what you can do differently. You have to act and stop kicking this can down the road. Some action is better than no action at all.

John Ellison asked when did you say that you would want people to start moving into the new area.

Councilman Rice answered we will be amending the Ordinance and it will have two readings. It will take at least two meetings. He would anticipate that we would be acting on this Ordinance in May.

Jennifer Kidwell added that right now the homeless provide their own water, fire rings and more. The service is a key. You are forcing them to be in an area and be dependent. There should be basic toilet and trash.

Mayor Johnson said this will require two more meetings. He hears a lot of issues and a big one is to take action. We have members of the City Council that are still pretty firm on where they were at the last meeting. He was going to support that staff move forward and find out more of the details but with what information he had now, he would not support the Ordinance. There are more details that need to come forward.

Council voted on the motion.

COMMENTS BY THE GENERAL PUBLIC

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John Schmidt encouraged council to look at approaching the county and jointly establishing an interagency taskforce.

Susan Thornburg asked if this is temporary then don't put up a fence.

There being no further business, Mayor Chris Johnson adjourned the meeting.

Mayor Chris Johnson

Shanell Owen, City Clerk