

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

SS August 7, 2013

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 4:00 p.m., Wednesday, August 7, 2013.

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
Councilman Rich Perry
Councilwoman Mandy Simons
Councilman Robert Schmidlein

City Staff Present: Curtis Calder, City Manager
Dave Stanton, City Attorney
Tom Coyle, Assistant 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**

There were no public comments.

I. NEW BUSINESS

- A. Hearing, review, discussion and possible action to determine appropriate liquor license discipline, if any (from no action up to and including license revocation), concerning the Verified Complaint in file no. 2013-001 entitled City of Elko vs. Michael D. Nye, d/b/a Tiki Hut, Kenneth L. Honeycutt, Manager and Joyce M. Honeycutt, Bookkeeper, and matters related thereto. **FOR POSSIBLE ACTION**

Mayor Johnson: The City Attorney has asked me to read the following into the record to give us a parameter of the procedure.

- The purpose of this hearing is to consider a complaint against the Tiki Hut filed by the City of Elko concerning alleged violations of the Elko Liquor Control Code.
- If any or all of these allegations are found to be supported by the evidence, the City Council may take action with respect to the liquor license held by the Tiki Hut.
- This is going to be an evidentiary hearing.
- Under Section 4-5-13 of the Elko Liquor Control Code, at this hearing, the complainant and the licensee may appear in person or by attorney, or both, and present relevant evidence and witnesses.
- The formal rules of evidence do not apply. However, matter affecting the admissibility of evidence under the formal rules, such as whether the evidence is hearsay, may be taken into account in determining the weight to be given to the evidence.
- The hearing will begin with the presentation of evidence by the City, which may include taking the testimony of witnesses and/or the submission of documents and other physical information.
- After the City has presented its evidence, the licensee may present its evidence.
- The City may then, at its discretion, present rebuttal evidence.
- All witnesses will be placed under oath before testifying.
- After the presentation of evidence by the licensee or the presentation of rebuttal evidence by the City, if there is any, I will close the evidence.
- Once the evidence has been closed, the City will make its closing argument, after which the licensee will make its closing argument.
- At the conclusion of closing arguments, the City Council will go into deliberations.
- During deliberations, neither the City nor the licensee will be entitled to present additional evidence or argument.
- Following deliberations, the City Council will make specific factual findings based on the evidence, and will then render its decision, which must be made by the vote of a majority of the members present at the meeting.
- That decision will be to:
 - Revoke or cancel the license;
 - Suspend the license for such a period of time as the City Council deems advisable;
 - Place such restrictions upon the license, the licensee and/or the licensee's place of business as the City Council deems advisable;
 - Make the license and the continued force and effect thereof conditioned upon such terms and conditions as the City Council shall deem advisable; or,
 - If in the opinion of a majority of all the members elected as City Council members, the charges set forth in the complaint have not been established or proved, they shall dismiss the complaint.
- Will the City please call its first witness.

Tom Coyle: Mr. Mayor, I have a few house cleaning items to begin with. First of all I would like to make a record that notice of this hearing was served on July 18th on Mr. Nye and we have filed proof of the notice of the hearing and the service with the City Clerk's

office. The same goes for a notice of a meeting that may involve character confidence, etc., of some person that is required by NRS Chapter 241. We served that on July 29, 2013. That has also been filed with the City Clerk's office. I would advise the council at this time that City has five (5) witnesses in this matter; Chief Don Zumwalt, Sergeant Matt Locuson, Officer Aaron Hildreth, Officer Klint Ratliff, and Officer Steven Spring. I would at this point inquire as to the witnesses that would be named by the licensee, if any.

Michael Nye: I'm sorry. I mean I brought my bartenders with me that work so. Is there a complaint? I got to know what it is so I can bring in bartenders that would normally be working that shift.

Mr. Coyle: Who are the bartenders you brought?

Mr. Nye: I brought Donna Crown. She is the dayshift bartender in the purple shirt. Tim McManus, swingshift bartender, and Terry Wit, graveyard bartender. I have two other bartenders that ones working now and one worked grave last night is sleeping. These are my main bartenders that work most of the time and have been with me throughout all this in 2012 and all that.

Mayor Johnson: Okay.

Mr. Coyle: Also at this time I would like to pass out a copy of the Liquor Control Code for yourself and all the Council Members and a copy of the Exhibits that the City will be using with regard to the testimony. At the same time I am going to give the exact same materials to the Tiki Hut.

Mayor Johnson: Can we do a swearing in of all witnesses at once?

Dave Stanton: The witnesses need to be sworn in before they testify.

Mayor Johnson: Can we do that all at once or do you want...

Mr. Stanton: They need to be individually sworn in.

Mayor Johnson: Do we have another copy for the minutes secretary? I guess we can...

Mr. Coyle: I have a copy for the witnesses.

Mayor Johnson: We would only need that for the City record. You don't need that immediately? We will get you one.

Mr. Coyle: At the end I will be offering them into evidence and then you'll get the official packet after that. At this time I would like to call Chief Zumwalt as a witness.

Mr. Stanton: I can swear the witnesses in individually. Would you raise your right hand. Do you swear or declare under pains and penalties of perjury that the testimony you shall give will be the truth, the whole truth and nothing but the truth.

Chief Zumwalt: I do.

Mr. Coyle: Please state your name and spell your last name.

Chief Zumwalt: Don Zumwalt. Z-U-M-W-A-L-T

Mr. Coyle: What is your occupation?

Chief Zumwalt: I am the Elko Police Chief.

Mr. Coyle: How long have you been so employed?

Chief Zumwalt: Almost five years as chief.

Mr. Coyle: Prior to that had you had law enforcement experience?

Chief Zumwalt: Prior to that seventeen years with the Elko Police Department in patrol and supervision and administration.

Mr. Coyle: At this time, Chief, I am going to show you what is marked as Exhibit Number one. (Mr. Coyle handed Chief Zumwalt Exhibit #1) Do you recognize that document?

Chief Zumwalt: Yes sir, I do.

Mr. Coyle: And what is it?

Chief Zumwalt: This is the Verified Complaint that your office typed but it was based on the complaint that I filed against the Tiki Hut.

Mr. Coyle: And is this one of several complaints that you lodged against liquor licensees at the same time?

Chief Zumwalt: Yes sir, it is.

Mr. Coyle: And can you describe for the Council, sort of a process that led up to filing these complaints.

Chief Zumwalt: I will. Um, members of Council and members of the audience, about two years ago we started seeing ("We" the Elko Police Department) were responding to and dealing with a lot more calls for service in our downtown area, specifically the bars. We had a lot more fight calls. We had a lot more serious violent calls down there. So we started doing some research and trying to figure out what we can do to make it it to 1) recognize the

problem to kind of develop an idea of what was going on and when and where. So we went to our records management system and pulled some data. The data that we first used to put this exhibit together and this verified complaint together was from November 2011 to May of 2012. It was a six month period in time. There was nothing spectacular about that particular timeframe except we wanted to get a six month window of time and look at the activity in a lot of the businesses in our downtown. And so that is what we did.

Mr. Coyle: Now when the problems were noticed by the department, was there any contact with the establishments to see if they could somehow rectify the situation or change it?

Chief Zumwalt: The first thing I did was put together a letter and I wrote it to all of the bars in the downtown area. The letter was basically stating there was a couple of issues that I had concerns about. One was over serving and one was serving to minors. I put together a letter with the City Code that already addressed those two issues and I delivered them to all of the bars in the downtown area. So we did foot patrols, we met with bartenders, we delivered the letters and just tried to start some dialog and say we were having trouble. We were having trouble with fights and violence and overabundance of problems that we were trying to resolve. We wanted to make sure that the bartenders and the bar managers and the owners heard from me. So I went down and delivered most of them myself. That is where I got involved with this process.

Mr. Coyle: Did those efforts result in a meaningful change that you could tell?

Chief Zumwalt: Well, no. There may have been. It's difficult because there might have been a little bit of a change for a while but over a period of time, six months to eight months, the activity was still going on and we're still having trouble. So to answer your question, no, it didn't have meaningful change and much of an attitude.

Mr. Coyle: How did you determine which bars to file the complaints against and based on your data.

Chief Zumwalt: We took data and the records management system can take an address. And we pulled data on each of the addresses on each of the businesses that had a liquor license in our downtown area. And so we've got for all of the bars for that particular six month period and compared them. Some of the bars had a lot of activity and some had a little activity. And so what we did, what I did, was decide that we had, at least in my career, had not done a complaint against a bar before. So I was trying to understand this process, trying to understand how this was going to work and what we were going to do. So we took the data and took, I think there was 12 total businesses we looked at, and there was a definite top three who had more activity that law enforcement were involved in (more fight calls, more assault and battery calls, those kinds of activities) and so we took those three, the top three businesses, and wrote verified complaints against all three of them.

Mr. Coyle: The data that you are referencing, is that the attachment to the verified complaint at lease as to the Tiki Hut?

Chief Zumwalt: Yes, yes it is.

Mr. Coyle: What are those pages? Where does that come from?

Chief Zumwalt: These pages, this exhibit one, the first part of the exhibit one is the complaint. If you open it up to the first incident report (it's what they are called). Whenever a call goes through dispatch and dispatch sends an officer or officers to a place, to a location, it creates an incident report. Now I want to make kinda clear, there's a difference between an incident report and a crime report. An incident report, we will do upwards of 35,000 incident reports in the City Police Department in a year. Not all of those will turn into crime reports but when dispatch sends resources to a call it generates an incident report. And that's the first one right there on page one of the rest of this exhibit is an incident report. And if you will see on the top left it starts with the date and time. Actually that is the date and time when the person in records pulled it up. And in that first line in the middle it has an incident number and as you kinda look down through there, that second horizontal column, if you will, has incident date and time, location and some other information that we can kinda gleam from that. So we pulled all this data from the Tiki Hut. It has an address. We pulled it up and you can print all of these off. This is what we have.

Mr. Coyle: Okay.

Chief Zumwalt: I also should explain that since we are talking about these incident reports, some of them... This is basically generated by dispatch. Some of them in that second horizontal column, at the top, it says incident type. The very first one is FURP. Well, not a lot of people know what that is. FURP is an acronym or shorthand for a Follow-Up Report. So whenever we get somewhere if an officer gets called to City Hall to do something, they will punch in that address, then whatever the incident type is, whatever the activity is that the officer needs to do, that's what goes into that incident type area. And this, page one, the very first one is a follow-up report. So that is not necessarily a violation of a liquor code or a problem with the bar. Matter of fact, all of these pages are like 50 some odd pages of incident reports from the Tiki Hut. Not all of them of problems. So we have to gleam through, go through here and kinda gleam some of the problems and separate those from the non-problems, if you will.

Mr. Coyle: Would you go ahead and go through the data then and advise the council which ones in your opinion show the problem areas.

Chief Zumwalt: Well, the first one I highlighted was on page 3. And so if the Council wants to follow along, it's the third incident report. The incident type is a fight. And I also was going to say, some of these incident reports won't have any narrative on the bottom and then some of these will. This particular one was a fight at the Tiki Hut. This was about 3:00 in the morning, about 3:18 in the morning. And at the bottom, the narrative from the dispatch. Now dispatchers type in shorthand so some of it... This is not printed for crime report material but it is basically just dispatcher shorthand. At the bottom it says, "Five

male subjects, cannot see weapons, it's in the parking lot." So they had a fight call. Officers went, cleared a call and this is one that won't have a crime report attached to it. It was a fight they responded to. Many times the fight calls we go on, a lot of times people don't want to be a victim and they don't want law enforcement in their life. So even though you had a fight, even though you have victims that have been involved in a fight, they may not want to file a crime report. So that's typically what happens. Page five is another one I highlighted. It's another fight. Again, interpreting the shorthand at the bottom, 117 is one of our officers, it's a call number. C4 means he is code 4 and doesn't need any more response. That they had a fight call, they were able to clear it to take care of it and not have any more issues. Page 6 is another fight call. This one 4:18 in the morning. And you can read through the narrative if you like. I underlined one thing in the middle that says, "the subject is picking another fight with three other subjects." They gave a description of the suspect. This was given out to law enforcement as they arrived. Page seven, the incident type is Peace. That is described as disturbing the peace. And you can read the narrative if you like. I highlighted down to about 2/3 of the way through. The RP which is the reporting party, states that now a male outside the Tiki Hut wants to fight. That is how these get started and that's how law enforcement gets involved with a lot of these. Page eight, another fight. This is 4:30 in the morning. The first narrative entry by the dispatcher is 10-10. That is our ten code for a fight call. So dispatch is getting information from the phone, dispatching officers to the Tiki Hut in reference to a fight. People will stop fighting, NHP is on scene, medical and everyone is running. It's kind of difficult, it's very difficult to explain sometimes the dynamic of a bar fight in our downtown or anywhere. Any bar fight that law enforcement shows up and people start to scatter and then we don't have a lot of information to get. Some of these we will have crime reports on. Many of these we will not. Page nine, for example, is an assist. That is not something the bar did wrong. That's not something that anybody did wrong. The narrative is "a training class." I don't know what kind of assistance that was in reference to but an officer went to the Tiki Hut to assist. And part of our discussion with the bars and the bar managers is the idea that I don't want to hold the bars accountable or consider it a problem if they call us for our assistance. That is what we are there to do. What I have encouraged them to do is call us as soon as possible so that the assistance is minimal and not blown up into a major catastrophe or a big fight. Page ten is a follow-up report and not considered any kind of problem against the Tiki Hut at all. Page eleven is a disturbing the peace call. Female won't leave. They dispatch officers. They have a problem person in the bar, a patron. This might be one where a bartender is calling police to say, "Look, we got a problem with this person. We can't get them out of our bar." Okay, we will go assist them, escort the person out and hopefully restore order to that business the best we can. Page twelve, if you read the first part of the narrative, the female is back. Typically, I cannot stand here and testify as to the alcohol level or the intoxication level of that female, but I would be willing, I don't bet but I would probably say that chances are very, very high that at 5:00 and 6:00 in the morning, that person was pretty well intoxicated and didn't want to leave. Was asked to leave and escorted out, wanted to come back, and that is part of the problem we have to deal with. Page thirteen is a disturbing the peace call. Again, the bartender kicked some people out about five times in the same night. They are having problems getting people to cooperate and that was part of their problem. Page fifteen and

then sixteen, the incident type is a weapons call. Page sixteen is the narrative. Again this is dispatch typing what they are hearing in their ear or on the phone from the caller. Sounds like a fight. The third line the guy holding the gun is inside the Tiki Hut. You can read through the rest of that. Advises a drunken Indian. No injuries yet. The RP hung up. You can read through that. The bottom part says though, state would not hesitate to kill someone and that's the suspect inside the bar. Page seventeen is another one that says assist. The bartender wants a walk-thru and that's perfectly fine for us to do because that first line, "wants a walk-thru, couple of Hispanics trying to start fights." Well, we want to avoid that if we can so we don't mind going to do those but that is the kind of activity we end up going to. Page eighteen is another disturbing the peace call. Male subject trying to cause problems came behind the bar twice. This was 5:20 in the morning. Page nineteen disturbing the peace call. Second line, "not fighting yet but the subject is challenging people." Now the very last line there you will see at the very, very end, the subject has left the bar for now, on foot/very 10-56." 10-56 is another ten code that we use for a drunk pedestrian or a drunk person. We have a different code for a drunk driver. If someone is intoxicated, whether they are in a bar or outside a bar, it doesn't matter where they are, the ten code we would use between us, the officer and dispatch would be a 10-56 subject. That means they are intoxicated. Page twenty is an MDPP. MDPP stands for Malicious Destruction of Private Property. That's a long term for vandalism. In the first line of the narrative it says, "a male subject threw a bottle and broke it." That's it. 11:14 pm inside the bar. Page twenty-two the incident type is a drug and alcohol call. This one has a crime report attached to it. This one is furnishing alcohol. Let me get the right one. Mr. Coyle, do you want me to go through these or do you want the other officers to testify on the crime reports.

Mr. Coyle: I have the other officers to do that.

Chief Zumwalt: At this point, if you would like I will sit down and you can call the other officer and he can explain this crime report. This particular one.

Mr. Coyle: Why don't you go through the remainder of that. Just a moment, I see that Mr. Nye has raised his...

Chief Zumwalt: Okay.

Mr. Nye: I mean, I don't even know what I've got. When I asked for discovery that I got from Mr. Coyle, I got eight things that was against me. And I told him when I got here I said if there is anything else, I said I don't have that information and I'm at a disadvantage here. When you talk, I have raised my hand five or six times which you asked me to do, if there is interruptions. I don't even know the dates. I don't have any dates on anything he's talking about. I've got eight things that I have from discovery that I thought we were going to be discussing here. And what he's been talking about I'll agree with a lot of what he's said...

Mayor Johnson: Hang on. Hang on. I want to stay with your point. Let's stick with that. Are we okay? He has an objection, I guess you would call it, that things are being presented that he didn't know about.

Mr. Coyle: And that's agreeable that I didn't re-give those to him but that was part of the verified complaint and that was given to his attorney at the time and so I had no idea that he didn't have those. What he asked for was any additional documentation and that's what I gave him. So the original verified complaint has all this information on it. It was delivered to his attorney so...

Mr. Nye: I haven't had an attorney for a couple months. We had him for a month. Okay, I'm sorry.

Mayor Johnson: Hang on a second. Okay City Council, do you see this as an objection where the proceedings should be limited to what Tiki Hut has in hand or claims to have on hand? Or can the City continue on?

Councilman Rice: Well, in my opinion the verified complaint was delivered on, to his attorney at some point.

Mr. Coyle: Almost right after it was filed so, um, if I can find that filing date. March 22, 2013 was when the verified complaint was filed. Thereafter the City served it on them. They filed notice of appearance of the attorney.

Mayor Johnson: Were these included as far as these incident reports?

Mr. Coyle: Yes.

Mayor Johnson: They were included?

Councilwoman Simons: Who is your attorney?

Mr. Nye: It was Bob Nolen out of Winnemucca. We had him, I'm gonna say five months ago. And I dropped him because I never felt like I did anything wrong. I never felt like he was doing anything and I never knew of any charges against me or anything that I've done.

Mayor Johnson: But you have this incident report was part of our packet. I'm assuming you received this incident report packet.

Mr. Nye: No, I haven't seen this until I walked through this door today.

Mayor Johnson: You did not have this at all.

Mr. Nye: No. And I asked Mr. Coyle, I said are we just going to discuss this discovery you gave to me and he said yes.

Councilwoman Simons: I'm sure he assumed that your attorney had passed that on.

Mr. Nye: No.

Mr. Coyle: Yes.

Mayor Johnson: Do you have the certified or how did you serve it?

Mr. Coyle: If I could have a moment.

Mayor Johnson: Oh, that's fine.

Mr. Nye: While Mr. Coyle's...

Mayor Johnson: Hang on.

Mr. Coyle: There is a document entitled "Proof of Service." It was date March 22, 2013. The matter was served upon the defendant by mailing a copy of the documents, actually at that time to Michael D. Nye at 433 Railroad Street address. That's been on file since March 22nd. So after it was filed and we had a file stamped copy, then we did what it says in the City Code and mailed him a copy of the verified complaint. Obviously he had a copy of it being as his attorney met with us in some negotiation sessions. I've got a notice of withdrawal of his attorney later on but... He has to be charged with having the same documents that his attorney had plus I sent them directly to him.

Councilman Rice: Originally you sent the original to him.

Councilwoman Simons: So you didn't mail it to the attorney in Winnemucca, you mailed it to his attorney at his address?

Mr. Coyle: No, I mailed it directly to him because he was the licensee and I had no idea if he was going to be represented or not at that point.

Mayor Johnson: Okay. So that included the complaint and also the supporting documentation as far as the incident reports that we have in our packet?

Mr. Coyle: Yes.

Mayor Johnson: Okay. City Council objection to the plaintiff?

Councilman Rice: No, I think he's been served the verified complaint. We have proof of service of it. And it's the verified complaint that we are hearing and it's the verified complaint that Mr. Nye ought to be responding to.

Mayor Johnson: Okay.

Mr. Nye: I would like to say that I don't remember getting those but if I did, okay, then when I gone to Mr. Coyle and asked for discovery and they said I had 58 calls but I only got eight of them in response. And that was just like three weeks ago. So this is what I came here to defend myself with.

Mayor Johnson: Well, the Council, unless I hear another objection from a council member we will continue on with the City's presentation.

Mr. Nye: Okay. And I'd just like to say that as Chief Zumwalt's reading this, can you give out dates because I'm not sure...

Mayor Johnson: They are all on the incident reports and he could qualify that too.

Councilman Rice: And all these incident reports were included in the verified complaint?

Mr. Coyle: Yes.

Mr. Nye: I'm just not sure where he's at or what page he's on. I'm lost.

Councilman Rice: You can have a copy...

Mayor Johnson: I know exactly what he is saying. I think the Chiefs are numbered and the ones that we have are not. So ours are page one.

Councilwoman Simons: Mine is.

Mayor Johnson: But if you go off of the public one.

Councilwoman Simons: Oh, I understand.

Mayor Johnson: Okay, so continue on.

Councilman Schmidlein: You just completed page 20.

Chief Zumwalt: Page twenty-two involves a crime report and I will Mr. Coyle speak with an officer involving that crime report little bit more in detail later. Um, page twenty-three is assault and battery. You can read the narrative. This is 3:19 in the morning. I'm gonna skip ahead a little bit, well, page twenty-three is assault and battery. That's 6/16/2012 3:19 in the morning. Page twenty-four, the very next one, the incident type is simply a suspicious event or person. At the bottom it says 149, which is a call number for an officer, transport the J3XJ, is again code for, the J3 is someone in custody, and it's a juvenile female from there. I'm gonna skip ahead. Now all of my page numbers are not numbered. Well, let's do this. Page twenty-eight, assault and battery. This also has a crime report attached to it. You can read through some of the narrative at the bottom. This one is 7/17/2012 at 4:32 in the morning. Page thirty-one, 8/12/2013 assault and battery. This is 1:21 am. The narrative says someone cut his RP, the reporting party,

they smacked him and wants medical. Bleeding from the side of the ear or the side of the head or ear. Unknown which. There again is a fight that happened inside the bar that required medical attention. Page thirty-two, 8/12/2012 3:06 am. Another fight. And again the narrative says 10-10 which is a fight, getting ready to start. So sometimes this is what we get from dispatch that it's getting ready to start and we want to get there as soon as we can so it doesn't become a bigger ordeal. Page thirty-four is another fight. 8/25/2012 5:30 am and the next page has the narrative. The individual got jumped by two people. They are still there. Punched him in the face. Down a little bit about half-way through the RP advises that the subjects are coming at him again and they all went outside. The next page is a fight. 8/26/2012 4:25 am. At the very bottom you will see 1J3. That means there is one arrest made and so an officer did take that person to jail. Skipping ahead, page forty, 9/5/2012 3:34am. Another fight. Again the dispatcher writes 10-10 and their showing officers showing up and taking care of that situation. Page forty-one 9/8/2012 6:57am. Another fight. At the bottom two males 10-10. 10-10 is again ten code for the fight. Page forty-three 9/15/2012 5:25am. Another fight. The narrative is "10-10 (which is a fight) inside the bar." And the dispatcher is always asking questions. Do they need medical, do they have weapons, that kind of thing. And they write down, no weapons, no medical needed. You see the units arriving which are the unit numbers of the officers when they arrive. Very next page, 9/16/2012 1:43 am. It just says suspicious event or person but the narrative it says, "a male needs to be removed." The next line it says "right in the middle of the bar very 10-56." That means he's just very, very intoxicated. Page forty-five 9/18/2012 1:29am. Disturbing the peace. Individual says apparently has a knife, talking about slicing someone's throat. Bartender trying to close the bar and the male won't leave. Officers arrive and take care of that situation. Very next page, page forty-six, assault and battery. That's on 8:31pm. Excuse me, 9/22/2012 8:31 pm. The narrative is on the next page. The caller wants to report an assault that happened. You can read through some of the information that the dispatch gets and types. Down towards the middle it says they tried to pull the RP out of the vehicle. And then you can read some more of the descriptors we get. Individual refused medical. And then you can see officers arrive and then some of the other information that we get. Very next page, 9/29/2012 4:06 am is a medical call. I would say just because it's a medical call again isn't necessarily a problem but if you read through the narrative it says the male laceration on the head in front of the Tiki Hut. The third line, again 10-56. That's again our ten code for intoxicated. And that's that one. Page fifty-one October 9, 2012. This is 10:16 pm. Disturbing the peace call. Individual yelling at people then asked to leave the bar. Just didn't want to leave. Page fifty-two is a fight call. This has a crime report generated with it. October 14, 2012 3:55 am and there was a crime report we can talk about it in a little bit. Attached to that one. October 14, 2012 about 20 minutes after the one I just gave you, this is 3:55 am. It's a fight call. There is also a report generated on that one. The very next page, page fifty-three 10/14/2012 about twenty minutes after the second fight is another fight call. The last line of the narrative "someone lying on the ground." Again, this is kinda shorthand descriptors of what dispatch learns. They type it in and then they dispatch the officers. The very next one is the same date, 10/14/2012. This one is at 4:32 am. Another crime report attached to that one. So we had three or four in a matter of a half hour or so. Page fifty-seven is a fraud case. And again, I want to point out that we took all the incident calls included in

this packet so we didn't pick and choose which ones we wanted to include. We picked them all. Now fraud case is certainly not a problem of the bar unless they were a victim of it. Certainly not something that we would count against them as far as other business activity. But that is another call. Page fifty-eight 10/18/2012 4:26 am disturbing the peace. Male at the bar. I'll be honest with you, I'm not exactly sure what "lost part of his limbs and won't leave" means but they are throwing chairs. A couple lines down the bar is cleared out. Page fifty-nine 10/21/2012 1:33 am. Another fight call. First line of the narrative "two IMA's," (That is an Indian Male Adult) "trying to jump him." Usually dispatch is talking to what we call the RP, the reporting party. And so sometimes the reporting party is the victim. Sometimes the reporting party is someone else in the bar; someone else calling. But when it says two IMA's are trying to jump him, again, they are trying to have a fight there. Very last page, page sixty-two, 10/31/2012 2:36am. First line of the narrative, "Subject is 10-56 and was kicked out of the bar and feels that they owe him \$40.00 for drinks he purchased and didn't get." We have a problem with a very 10-56 male. This is the data. This is the data that we, that I developed from our records management system. I did this for all the bars that were in question. I have piles of paper just like this on incident reports on all of them. Like I told you before, we took the top three and wrote verified complaints. You know, started this process and here we are today with the Tiki Hut.

Mr. Coyle: Chief, let me show you Exhibit No. 2 now. (He handed Exhibit No. 2 to Chief Zumwalt.) Do you recognize Exhibit 2? I guess just directing your attention those appear to be maybe the reports of the three fights that happened within a short span of time that you were testifying about.

Chief Zumwalt: Yes and the reason it took me so long was to look through them was because the first couple pages I didn't recognize. What you see in Exhibit 2 are crime reports and they look different. They are in a different format. The top says Elko Police Department Detail. And if you read through it, it will have a case number, it will have a location, it will have an incident type and then it will have the date and time it occurred and a date and time reported. All that right underneath the first bold line is all that case information. Also in there it has the reporting officer ID that shows who wrote it and assigned area. He was in patrol. This is what a crime report looks like. It's much more detailed. They are able to scan statements and different things into it. So yes, this, uh, these are crime reports.

Mr. Coyle: Now those crime reports, are they as I mentioned, the three that happened in sort of rapid succession?

Chief Zumwalt: Yes. October 14, 2012 about 4:30 in the morning.

Mr. Coyle: Now regardless of whether it's these reports that you looking at in exhibit 2 or it's what we have already been through in exhibit 1. These reports and incident reports, those are instances where law enforcement is required to go to that location and expend the resources and time to address the issue, right?

Chief Zumwalt: That is correct.

Mr. Coyle: And in coming to this point where you are filing the verified complaint, was it your position that the city had come to a stage where it was using up an inordinate amount of resources and having greater concern for public safety at that point?

Chief Zumwalt: Yes. The Police Department resources... For this time frame, through this time period, we started to notice that we were spending a lot more time with law enforcement officers (patrol officers) responding to calls in the downtown more than ever. More than we thought we should be. The problem I had was that they were actually becoming more violent calls for service. My City Council advises that it's a resource issue that we were spending hours. Sometimes half of a shift within an entire patrol crew downtown because of all the problems continuing and that became quite evident to me that the rest of the city wasn't getting law enforcement service. It became a problem and so that is why we went down this procedure in trying to verify dates and times and locations as to where our resources are being spent and then on what kind of calls.

Mr. Coyle: And just so we establish jurisdiction in this matter, is Michael D. Nye dba Tiki Hut a liquor licensee within the City of Elko?

Chief Zumwalt: Yes sir, it is.

Mr. Coyle: I'll pass the witness for cross examination if any, Mr. Mayor.

Mayor Johnson: Okay. Do you have any questions for the Chief?

Mr. Nye: I do.

Mr. Coyle: I supposed we would need a microphone maybe.

Mayor Johnson: Maybe so. Yea to keep them both on for record.

Mr. Nye: Thank you. First let me say that what Chief Zumwalt said about that trouble escalating two years ago is true.

Mayor Johnson: Hang on a sec. This in an opportunity to actually question the Chief.

Mr. Coyle: Yea, it's just to ask him questions based on the information I brought out.

Mayor Johnson: Do you have any questions of the Chief?

Mr. Nye: Well, I have one. How come this information I got on discovery gives the whole story and what you are reading to them isn't the full story.

Chief Zumwalt: I'm not sure what you have.

Mr. Nye: Okay. I have the Police Report on all these. What you have is just what dispatch is telling you.

Chief Zumwalt: What I have, what we started with in Exhibit 1, which is over there on the floor, is the data we used in their incident reports. This is my copy that I scribbled on. But Exhibit 1 should have these incident reports attached to it. That is what we used for the complaint. I just went through all of them. All sixty-two pages of them and some of them were significant and some of them were not. But that is what I used to develop the complaint.

Mr. Coyle: Maybe I can ask one question that might clarify this. At some point, and it's probably approximately like Mr. Nye represented, three to four weeks ago, did I ask you for any further discovery (i.e. crime reports) that went along the data found?

Chief Zumwalt: Yes. And all of these sixty-three some odd pages of data, they are not all crime reports. But what we did was we went through them all and found out which ones had crime reports attached to them and that's what I gave you. I have the copies of the crime reports and I think that's what you have. That is a specific crime report. That's a little different than this incident report data that we've used. The crime reports are specific to a case number that is generated in the incident. Apparently that's what you have is crime reports.

Mr. Nye: Right and you kept bringing up October 14th. There was a lot of trouble that day.

Chief Zumwalt: Yes.

Mr. Nye: Okay. Now you made it sound to City Council here that all this stuff is happening in the Tiki Hut. It's not. I've read the Police Report and nothing in here points to the Tiki Hut. They might say the Tiki Hut out in the parking lot or the 400 block but nothing in here shows anything happened in Tiki Hut. The Police Report is what I go by in here. What the patrolman says.

Chief Zumwalt: Okay.

Mr. Nye: That's what I'm just saying.

Mayor Johnson: Mr. Nye, are you leading to a question there, for the Chief?

Mr. Nye: Well, no. I just think that we should be getting all the information. It should all be out and not just part of it.

Councilwoman Simons: I do think that just so you know, we have the Police Reports and I think that they will be coming up. I do think that we will get that information out there.

Councilman Rice: I guess I'd add that most of these that I've read, or not most of them but many of them, it did say in the Tiki Hut.

Councilwoman Simons: Well, when you read the Police Report some of them say it happened outside the in the parking lot. I think that is what he is referring to.

Mayor Johnson: Any further questions? Next witness.

Mr. Coyle: I'd release the witness subject to recall, however. And I would call Aaron Hildreth as my next witness.

Mr. Stanton: Do you swear or declare under pains and penalties of perjury that the testimony you shall give will be the truth, the whole truth and nothing but the truth.

Aaron Hildreth: Yes.

Mr. Coyle: Please state your name.

Mr. Hildreth: Aaron Hildreth.

Mr. Coyle: What is your occupation?

Mr. Hildreth: Police Officer at the City of Elko.

Mr. Coyle: How long have you been so employed?

Mr. Hildreth: Approximately five years. I'm sorry, approximately eight years.

Mr. Coyle: At this time I'm going to show you what's been marked as Exhibit No. 3. (Mr. Coyle handed Mr. Hildreth Exhibit No. 3.) Do you recognize that document?

Mr. Hildreth: Yes it's a Police Report that I did.

Mr. Coyle: What was the date and time of the investigation?

Mr. Hildreth: It was June 6, 2012 approximately 3:30 am.

Mr. Coyle: How did you come to be involved in that investigation?

Mr. Hildreth: If I recall I remember I was actually on bike patrol that evening sitting outside in the 400 block of Railroad Street.

Mr. Coyle: And what happened while you were there?

Mr. Hildreth: I was sitting on bike patrol with another officer and a seventeen year old female that I previously recognized walked out of the bar.

Mr. Coyle: Out of what bar?

Mr. Hildreth: Out of the Tiki Hut.

Mr. Coyle: And what happened when she walked out of that bar?

Mr. Hildreth: Having dealt her before I knew she wasn't 21 years old. So I stopped her, detained her and talked to her. It was obvious right away that she had been drinking. She admitted to drinking. We conducted a PBT and she was subsequently detained and transported.

Mr. Coyle: Can you describe for the Council what a PBT is?

Mr. Hildreth: PBT is a preliminary breath test. It's a small machine we carry around that detects the amount of alcohol on a person's breath.

Mr. Coyle: In this instance what did the PBT test indicate?

Mr. Hildreth: She actually blew a .178 which is, the legal limit for driving is a .08, so she was over double what an adult legal driving limit is.

Mr. Coyle: And this seventeen year old at that level, did she appear to be highly intoxicated to you?

Mr. Hildreth: Yes she was.

Mr. Coyle: Again what time of the day was this?

Mr. Hildreth: This was at 3:30 am.

Mr. Coyle: Did you do any further investigation at that point?

Mr. Hildreth: I did.

Mr. Coyle: Was this minor actually taken into custody?

Mr. Hildreth: Yes she was. I didn't put it in my report but I remember specifically I asked her where she was drinking, you know, to look into who had actually provided her with the alcohol and she wouldn't tell us who or where she had got the alcohol.

Mr. Coyle: I'll pass this witness.

Mayor Johnson: Okay. Do you have any questions for this witness?

Mr. Nye: No what he said is exactly what I got in my report. He seen her walk out of the Tiki Hut at 3:30 and she was detained and all that. That's all it says.

Mr. Coyle: I think this officer could be released. I won't need him in any rebuttal case either.

Mayor Johnson: Okay.

Mr. Coyle: I would call Officer Locuson. Sergeant Locuson.

Mr. Stanton: Do you swear or declare under pains and penalties of perjury that the testimony you shall give will be the truth, the whole truth, and nothing but the truth.

Matthew Locuson: I do.

Mr. Coyle: Please state your name and spell your last name.

Mr. Locuson: Matthew Locuson. L-O-C-U-S-O-N

Mr. Coyle: What is your occupation?

Mr. Locuson: I'm employed as an Elko City Police Officer.

Mr. Coyle: How long have you been so employed?

Mr. Locuson: sixteen and a half years.

Mr. Coyle: At this time I am showing you what's marked as Exhibit 4. (Mr. Coyle handed Mr. Locuson Exhibit 4.) Do you recognize that document?

Mr. Locuson: Yes sir.

Mr. Coyle: Is that a crime report where you were the investigating officer?

Mr. Locuson: Yes sir, it is.

Mr. Coyle: Can you describe that investigation for the Council?

Mr. Locuson: This is a report of vandalism that was reported on June 13, 2012 at about fourteen minutes after eleven that night. It involved the bartender who was the initial reporting party. The bartender was identified as Angel Steers that evening. She had a problem with three male patrons that had, uh, that were inside the bar or recently come in the bar. They wanted to order more drinks that night but apparently were cut off or refused service because they did not have any money to pay for those drinks. Once they were cut off by the bartender, one of the males referred to the bartender in a derogatory manner. The other second of the males who had a beer bottle in his hand was told, I guess, threw the beer bottle across over the bar and smashed out a bottle of alcohol that the bar uses for sale to make mixed drinks or whatnot. It shattered that bottle and there was alcohol whatnot kinda dripping off the bar. So the Tiki Hut in this case incurred property damage from the male's actions.

Mr. Coyle: Were the males still present when you arrived.

Mr. Locuson: They were not. They had left the scene before I had gotten there.

Mr. Coyle: Was that the extent of that investigation?

Mr. Locuson: It was that evening. The bartender, I believe, she recognized one of the males and provided a first name but she didn't know any further. I went back in the night or two after this report to try to obtain the video footage or video surveillance from the incident and when I did that the bar did not want to be a victim anymore at that time and did not want to seek any prosecution for the property damage.

Mr. Coyle: I'll pass the witness for cross examination.

Mayor Johnson: Okay. Any questions?

Mr. Nye: No sir. He told it just exactly like I read the report.

Mr. Coyle: This witness can be released.

Mayor Johnson: You're okay with that as well?

Mr. Nye: I am.

Mr. Coyle: I'll call officer Ratliff.

Mr. Stanton: Do you swear or declare under pains and penalties of perjury that the testimony you will give will be the truth, the whole truth and nothing but the truth.

Klint Ratliff: Yes.

Mr. Coyle: Please state your name and spell your last name.

Mr. Ratliff: Klint Ratliff R-A-T-L-I-F-F

Mr. Coyle: What is your occupation?

Mr. Ratliff: I am actually a detective for the Elko Police Department.

Mr. Coyle: How long have you been so employed?

Mr. Ratliff: Two and a half years.

Mr. Coyle: I will show you what has been marked as Exhibit No. 5. (Mr. Coyle handed Mr. Ratliff Exhibit No. 5.) Do you recognize that document?

Mr. Ratliff: Yes I do. It's a report I had during the 15th of June, 2012.

Mr. Coyle: And what is this report involving?

Mr. Ratliff: Um, every year during the Motorcycle Jamboree we are, my former partner and I, would conduct alcohol compliance checks on all the bars downtown, all the venues outside the bars and any place serving alcohol. It was in cooperation with PACE coalition. It was EUDL (Enforcing Underage Drinking Laws), we were enforcing those. Make sure the bars aren't serving people under the age of 21.

Mr. Coyle: And so how do you do that?

Mr. Ratliff: We actually have a young man who (we have used women as well) under the age of 21 and have them just have their driver's license that shows that are not 21 years of age and they go to each one of the venues. We hit every single one of them. We don't just pick out certain venues. Go through and the person, the young man or young woman that we are using, goes up to a bartender, they ask them what they want. A bud light is what we have always picked and when they ask for an ID they hand them their ID and that's it. If they serve then we approach them after the person has already left. If they don't serve then we walk away and go to the next one.

Mr. Coyle: In this instance, is it involving the Tiki Hut where this investigation happened?

Mr. Ratliff: Yes, on this one. Yes.

Mr. Coyle: And it was at, I guess, a venue just outside the Tiki Hut?

Mr. Ratliff: Yes. Um, they had two different awnings or tents outside the canopied area is where they were serving, outside the bar as well as inside.

Mr. Coyle: And the outside was being run by the Tiki Hut?

Mr. Ratliff: As far as I know, yes sir. That is what we were stated as the... the bartenders that are going to be working there, they all have, they are all under certain businesses and this one was under that business. It was under the Tiki Hut.

Mr. Coyle: And so what happened during that investigation?

Mr. Ratliff: Our young man walked up. He approached a female bartender. She asked for his ID. She looked at it. His birthday, I believe it was July 3, 2012 would make him, he would have been 21, so almost a month later he would have been 21 years of age. She looked at the ID and said, "no way." And then she said, she still had the license and she says, "hold on." She walked back towards the doorway. When she got back to the doorway she asked a very tall man, I don't know who he was, and he looked at the ID and said, "go ahead." And then she walked back over and asked him what he wanted to

drink again. He said a bud light and she handed him a bud light. He paid for it with the money that we give to him from the Juvenile Task Force. He walked away when she gave him the change. Upon him walking away, which I was five feet away from him, I don't even think I was that far away from him on that day. My job was to watch the entire transaction go down, see what happens. Most of the time they don't even sell to the kid but on this case when she walked away I watched her walk away, walk over to the other gentleman, come back and give him his beer and he walked away. At that time I inform, at that time Deputy Robb, Larry Robb with the Sheriff's Department. He assists Bill Chamness and I on all these. He came up, he gets the names of the bartender. I point out the bartender that served him alcohol. He gets her information. We usually pull them to the side and as we were talking to her I explained to her that I had seen that when she walked away. She said no right away and then she walked away and asked the guy and then came back and served him alcohol. I told her that ultimately she is the one responsible for selling the alcohol cause she is the one that took the money and gave him the beer.

Mr. Coyle: I'll pass this witness.

Mayor Johnson: Okay. Any questions of this witness?

Mr. Nye: No sir. He did it just like the report said.

Mayor Johnson: Okay.

Mr. Coyle: This witness can be released from the City. I call Officer Spring.

Mr. Stanton: Do you swear or declare under pains and penalties of perjury that the testimony you shall give will be the truth, the whole truth and nothing but the truth?

Steven Spring: Yes.

Mr. Coyle: Please state your name.

Mr. Spring: Steven Spring.

Mr. Coyle: What is your occupation?

Mr. Spring: Police Officer for the City of Elko.

Mr. Coyle: How long have you been so employed?

Mr. Spring: Since November 1999.

Mr. Coyle: At this time I am going to show you what's been marked at Exhibit 6. (Mr. Coyle handed Mr. Spring Exhibit 6.) Do you recognize that document?

Mr. Spring: Yes this is a crime report I completed.

Mr. Coyle: What date was the incident involved?

Mr. Spring: July 17, 2012.

Mr. Coyle: What was the time?

Mr. Spring: Approximately 4:32 in the morning.

Mr. Coyle: Describe your investigation for the council please.

Mr. Spring: I was dispatched to the Tiki Hut bar in reference to a female who was alleging she was battered. When I arrived I spoke with her and I spoke with Mr. McManus who is a bartender at the Tiki Hut and Mr. Witt who was the actual on-duty bartender at that time. The female claimed that Mr. McManus and another male had gotten into an altercation and that she was trying to keep them separate at which time she claimed the other male had battered her. I spoke with Mr. McManus and he admitted to him and the other male getting into a confrontation. Both him and the female were very intoxicated at that time. I spoke to Mr. Witt who was the bartender at the time and he related to the same basic events that the female had. I was subsequently able to meet with the other male, Mr. Matthews, at his residence. He corroborated everything that everybody else had said.

Mr. Coyle: So, Mr. McManus was an off-duty bartender at the time you were there?

Mr. Spring: Yes.

Mr. Coyle: And it was he and the female were the intoxicated persons?

Mr. Spring: Yes.

Mr. Coyle: So were charges pursued in the investigation?

Mr. Spring: I filed a report to the District Attorney's office for a charging decision. I am not sure what the disposition of that was.

Mr. Coyle: I'll pass this witness.

Mayor Johnson: Okay.

Mr. Nye: I know who the officer is and I know about the report. So I am sure everything is fine here.

Mayor Johnson: Okay.

Mr. Coyle: This witness can be released. At this time, Mayor, I would offer into evidence officially, Exhibits 1 through 6. I know at present Mr. Nye has Exhibit 1. The remainder I have here and will give to the recorder.

Councilwoman Simons: Do you want him to take all of mine?

Mr. Coyle: These were the official ones shown to the witnesses. He can hold that until the end of the hearing as long as we can get that back from him when he is done.

Mayor Johnson: So are you at the end of your presentation of evidence?

Mr. Coyle: I'm trying to determine that right now, Mr. Mayor. Just a moment, please. Yes, at this time the City would rest its case and Chief.

Mayor Johnson: Okay. Your opportunity to present.

Mr. Nye: My name is Mike Nye, owner of the Tiki Hut. I have had the Tiki Hut for approximately five year.

Mr. Stanton: Can I stop this right now? This is the evidentiary portion of the hearing. And so if you are going to be providing testimony that is testimony for the council to consider then you have to be placed under oath. If what you are going to be doing is presenting an argument, just making an argument, that is not under oath and that will be later on in the proceeding.

Mr. Nye: I'll talk about the discovery that I had gotten that I am familiar with.

Mayor Johnson: So that about to be the testimony?

Mr. Stanton: Are you going to be presenting any witnesses?

Mr. Nye: Yes I am.

Mr. Stanton: Okay. The witnesses will have to be placed under oath. Now are you just going to make, are you just going to discuss discovery? You aren't going to be providing any testimony that you want the council to consider as evidence?

Mr. Nye: Well, I would like to do both if I could please.

Mr. Stanton: Well then let's place you under oath. Do you swear and declare under pains and penalties of perjury that the testimony you will give will be truth, the whole truth and nothing but the truth?

Mr. Nye: I do. Okay, my name is Mike Nye. I've had the Tiki Hut for approximately five and a half years. Okay? Now when I got the Tiki Hut I had a lot of cleaning up to do and I did. I fixed the bar up pretty good. And before any of this happened I had put surveillance in

the Tiki Hut about four years ago. I have sixteen cameras and they all work good. I've showed them to the Police Officers. Any time they wanted to see them I burned them copy CD's. I've taken them to the Police Department. I've never hid nothing from them. I've had a very good rapport with them. Okay so when this all came out I was just blown away by it. If there's ever a fight in the Tiki Hut then I better be hearing from the bartenders first every time. And a few years ago we have but with all this stuff that came out today. I only got eight here but I'm not going to waste your time. Let's go back to October 14th when you say we had all this trouble. Let me read the Police Reports to ya. Not what the dispatch says. Okay, October 14, and this one never had no time on it. And I don't know why I am being charged or something is against me. It says, this is Officer Anthony Matthews. It says on October 14, 2012, at about 0400 hours, which is 4:00 am, Officer Anthony Matthews and I were in the area of 433 Railroad Street. I saw a man that later identified himself as Ricardo Chavez, walked up to a group of men that were standing on the sidewalk in front of 433 Railroad Street. I saw a glass beer bottle in his hands. I contacted Ricardo Chavez and found that the bottle was half empty of Coors Light beer. I asked him if he had any identification. He said he didn't have any identification but his name is Ricardo Chavez. He said his date of birth is 2/24/1979. I noticed a bulge in the right rear of his pants and it looked like he had a wallet in his pocket again. Okay this goes on to say that they had a guy with a counterfeit ID. Okay? It never ever says that he was in the Tiki Hut or had anything to do with the Tiki Hut but was in the vicinity, close to 433 Railroad Street. Okay? He had nothing to do with this. Zero to do with the Tiki Hut. Why is this against me? I don't know. Here's the next one from October 14th. Okay. This was a fight outside. October 14, 2012 at approximately 3:55 in the morning. I was on foot patrol downtown corridor. I was walking on the sidewalk headed westbound at the 400 block of Railroad Street when I observed a male subject in a maroon shirt. Later identified as Brandon Hicks throwing punches at another male subject later identified as Martin Gaitia. I ran towards the fight and a crowd of people began to gather around the two male subjects. They were blocking the sidewalk. When I got the fight, Brandon was holding onto Martin and another male subject was trying to pull Brandon off Martin. I was able to get the other male subject off of Brandon and I put Brandon's right arm in an arm lock and took him to the ground. While on the ground I told Brandon to give me his left arm and he complied. I placed Brandon in handcuffs for safety. While on the ground Brandon kept saying he was sorry. Officer Jason Ward spoke to Martin who Brandon was fighting with. He said he did not want to be a victim of a crime due to Brandon starting a fight and cause a crowd of people to gather and block the sidewalk. I advised Brandon he was being arrested for disturbing the peace. I moved Brandon to Officer Anthony Matthews' Police car without incident and Officer Matthews transported Brandon to my Patrol car which was located on the east side of the Commercial Casino. I took Brandon out of Officer Matthews car and walked him to my patrol car. As I was walking Brandon to my car he began to throw up. I asked Brandon if he was going to be okay and he said yes. Brandon refused medical treatment and transported him to the Elko County Jail where he was later booked for disturbing the peace. The Tiki Hut never even got mentioned in here. Ever. Never ever got mentioned. It was just blocking the sidewalk. If these are the kinds of things that have been going on against the Tiki Hut for a long time. Now Chief Zumwalt's got it as a fight in the Tiki Hut. It's not a fight in the Tiki Hut. I've got two pool tables, two dart

machines, ATM machine, jukebox and eight gaming machines in there and I have never ever had one of them broke ever. And if all these fights are occurring that's impossible. I mean that's not happening. Here's another one. October 14th. Freddie Jenkins fighting in front of the Tiki Hut. Okay on 10/14/12 at approximately 4:10 hours, I Officer Anthony Matthews responded to the front of the Tiki Bar regarding a fight that was about to start. Now keep in mind, ten feet from the Tiki Hut is the Cantina. And since they've opened up I agree with Mr. Zumwalt. A couple of years ago things really escalated and trust me I know it too. Some reason they never get mentioned. It's got a lot of pretty bad language in here but basically it just says that there was a fight out in front of the Tiki Hut. The sidewalks aren't mine. And the bartenders know that if there's a fight outside lock the door. Lock them out lock them in. They let them out if they want out but keep the doors locked until everything is dispersed. They've known that for a couple of years. I've got more on here but everything that I got from Mr. Coyle, nothing points to anything wrong with the Tiki Hut. It's all outside or they had that one little thing where two people pushed each other. A girl got in the way accidentally. Cops seen that she is and everything was an accident. I've just been railroaded over and over and over and over again. But nothing. I want my bartender, especially my graveyard bartender or my swingshift bartender that are there for most of this cause I asked them questions, "what's going on?" "We don't know." I'm telling you these are calls that we just don't. The accusations that I don't understand. I really don't understand them. The Police Officers come through there. When they walk through they seem to hang out in there more than the other bars because they feel comfortable in there. They've told me to my face this is the best bar downtown. I've been there when their off-duty go in there to party. All the officers that came here at witnesses they told the truth right down the line. I can't dispute what they said. It's exactly what's in their report. So exactly. So all these calls from the dispatch you have to understand that the whole corridor does not belong to the Tiki Hut. The Tiki Hut belongs to the Tiki Hut. And if there is ever an issue I've got surveillance and I've never ever denied the cops to look at it ever. I've got a good bar. All my bartenders are over 40 years old. We don't have no function there. We don't put up with fights. No drugs or anything. If somebody starts a fight they are out for life. If somebody steals something they are out for life. There's no second chances. So I'd like at this time to have Tim McManus come up. He's my swing shift bartender.

Mr. Coyle: I have a couple of questions for Mr. Nye.

Mayor Johnson: Sure. That's why I was asking if you wanted to ask those now or do you want him to go?

Mr. Coyle: I'd like to ask now since...

Mayor Johnson: That's fine since we're close to that.

Mr. Coyle: It sounded like in your testimony and when you were questioning the Chief, you agree with the concern that he expressed that there was an escalation in fights and more violent fights and apparent over-serving in the downtown area.

Mr. Nye: In the downtown area. I don't know about the over-serving. I only know about my bar but I do agree with him on the fights.

Mr. Coyle: Okay. And you realize that those October 14th reports, you had requested of me anything that had to do with the verified complaint and I gave you everything that the Chief could find on it, correct?

Mr. Nye: As far as I know.

Mr. Coyle: Okay. And so it's your own conclusion that those three or something that were really asserting against the Tiki Hut, correct?

Mr. Nye: Right. Well, I mean I just gave em what you gave me. What's happened outside, like I said, is outside. I got one in here, this is a fight out...

Mr. Coyle: You don't think that you have any responsibility at all for what happens outside?

Mr. Nye: If they were in the Tiki Hut and then go outside to fight, I do. But nothing points to them ever being in the Tiki Hut. Not one shred of evidence.

Mr. Coyle: Other than they are in the location of the Tiki Hut.

Mr. Nye: Other than they are in the location. But so are two other bars or three, four other bars.

Mr. Coyle: But you can't sit here and tell the Council that none of those individuals were not in the Tiki Hut before the fighting, right?

Mr. Nye: No but I'll tell you this. If any of these guys were arrested or anything my cameras have always been open for this but I'd like to at least some proof. I'm not gonna sit here and say that they were. I'm glad I've got my bartenders here that usually know more about it than I do.

Mr. Coyle: That's all I have.

Mr. Nye: I'd like Tim McManus to come up and he's my swing shift bartender. Okay and he back then was working all your weekends; your Thursdays, your Wednesdays; and, your Sundays. And he knows what's going on for swing shift and he's here for a lot of the graveyards too. So you've heard what Chief Zumwalt said about all these accusations.

Mr. Stanton: Will you raise your right hand? Do you swear or declare under pains and penalties of perjury that the testimony you will give will be the truth, the whole truth and nothing but the truth?

Tim McManus: I do. Okay, first of all I was the one that they were talking about on the one report with me and Fred Matthews and another woman. Her name was Anna. We did get into an argument. She mistakenly got hit, rubbed actually on the side of the face, and

she kinda went ballistic. No charges were filed on that and nothing ever became of it. And we are friends still to this day. But I have been there since before Michael bought this bar as a bartender. I've never once in my entire life called the Police to that establishment for any reason especially for anybody being in physical danger in my entire life. Never. Not once.

Mayor Johnson: Okay, do we have questions?

Mr. Nye: I don't have any questions. I've talked to Tim and I said, "I don't understand all these accused of all these police calls."

Mr. McManus: Ya, never have I a customer in distress that I had to call the police. The fighting; they do fight in the parking lot. I get off work and I stay there and have a couple of beers before I leave. There are continuous. There's fights in the parking lot. Sometimes they fight in the alley. There are fights outside. People fight all the time. It is not inside of the bar. The bar is contained. It is run. The bartender is there. We overlook the customer. We talk to the customers. If they start an argument we deal with their argument. We calm them down. We don't just say get out and go ballistic. And they don't start in the bar. If they do we are going to stop them. But I've never had to call the cops to a fight in the bar. I've been there before Mike bought the bar. When the other owners had the bar and still never had the problem. And they were fighting out in the parking lot during that time too. Not as bad. I agree with him that it did get bad. It did get bad since there was a shooting out in the parking lot. And that was out in the parking lot as well. Not in a bar. But it has gotten bad. The police does do their foot patrol. They do come on my shift and they do come in and they say, "Hi, how's it going tonight. Is everything okay?" And I do the same to them. "How's everything everywhere else?" We have a good rapport with the Police Department. I do like that. We do have a good rapport with them. And they stop by and they do check. And that is good. And we notice when they are around that the violence is not out in the parking lot or on the sidewalks or anywhere else in the corridor when they are around. They are not going to do that. They see that the police are present and that doesn't happen. So that's a good thing.

Mayor Johnson: Okay.

Mr. McManus: And that's pretty much what I would like to say. A lot of the fights in those reports, these people are not in my bar when this happens. They are outside. I certainly have never called them for these reports. My name is not on any of these anywhere. And it says who makes the call. And I have been there longer than everybody but one person.

Mayor Johnson: Okay. Any other questions?

Mr. Nye: No, uh. I don't have any questions for Tim.

Mr. Coyle: The shifts that you work per week, are they regular set?

Mr. McManus: Ya, I work from 4:00 in the afternoon until midnight at night. It's a very busy shift especially on the weekends. It's the busiest shift.

Mr. Coyle: Seven days a week, or?

Mr. McManus: Four days a week. I work the weekends; Thursday, Friday, Saturday and Sunday. The busy weekends.

Mr. Coyle: So it sounds like you see lots of fights but you don't see any fights inside the bar.

Mr. McManus: We don't have any fights inside the bar. People do fight in the parking lot by cars. They get in fights on the sidewalk but it's not happening in the bar.

Mr. Coyle: And people that have been served in your bar, they go outside to fight?

Mr. McManus: No. I do not have that happen. They do not just leave the bar and go out and fight. We wouldn't allow that. They do fight in the parking lot but it's not something that happens in the bar and then they go outside and fight. It's stuff that happens outside. And it was a lot worse they did allow glass out there. I remember that was a battlefield out there. They'd fling bottles across the parking lot.

Mr. Coyle: I don't have anything further.

Mayor Johnson: Okay.

Mr. McManus: Thank you.

Mayor Johnson: Other witnesses?

Mr. Nye: Well I can bring up my graveyard bartender but what would be the point, you know? There's no bar in this world that could be perfect and you have to be...

Mayor Johnson: You will have a chance at closing.

Mr. Nye: Alright, I'm just... That's good for witnesses for me.

Mayor Johnson: So no other evidence to present?

Mr. Nye: Nope.

Mayor Johnson: Now we're at Mayor's discretion present rebuttal evidence. Do you have any rebuttal evidence?

Mr. Coyle: I don't believe so, Mr. Mayor. I'd ask that the evidentiary portion of the hearing be closed.

Mayor Johnson: Okay, and go into closing arguments? Does that sound okay to you?

Mr. Nye: Sure.

Mr. Coyle: Sure. Mr. Mayor and Council, I'm gonna ask that you find specific violations that would warrant discipline in this particular case. When you look at the Hildreth report, which was Exhibit No. 3 that occurred on June 6, 2012, at least from the City's position it would indicate that they had a violation of a minor loitering in a bar for sure. Officer Hildreth sees her come directly out of the Tiki Hut bar at 4:00 in the morning or thereabouts. Additional violations that could come from that same instance is, you know, sales to minors. If she is actually being served, maybe have circumstantial evidence, she comes out of that bar, she's plowed, where is she getting that alcohol? May circumstantially seem to the City that it's by preponderance of the evidence that it occurred inside that bar. Another additional violation just from that one report is that it appears she was over-served inside that bar. She's apparently a young individual. She comes out and she's at a .187 and the officer described her as being highly intoxicated. So that would be an indication of over-serving. When we talk about minor loitering, that's a violation of 4-5-26 of the Liquor Control Code. Sales to minors would violate 4-5-19. Someone being over-served in a bar 4-5-28B. We look at the Locuson report which was Exhibit 4, again there I would say you have circumstantial evidence of over-serving. We've got people that were in there being served until they no longer have any money. Now all of a sudden they're cut off and you got people at that moment the City would submit intoxicated to the point that they're going to become aggressive and that's what they did once using vulgarity towards that bartender. Another one throws an actual bottle back into the back of the bar and breaks another container of alcohol. And we would submit that is a violation of the 4-5-28 also. In the Ratliff report you have a sale to a minor witnessed by a Police Officer. That's a violation of 4-5-19. In the Spring report we have again, over-serving and again, to the point of aggression. Officer Spring went there and Mr. McManus, one of the witnesses was highly intoxicated in his opinion from his observations as was a female subject there that even though Mr. McManus describes it, she was just brushed. Evidentially she was brushed sufficiently that she called officers; that the officers showed up; that she maintained throughout that there was a battery that had occurred. Let me get to the Chief Zumwalt testimony and Exhibits 1 and 2. We'd say that's in addition to those other four I just pointed out for the Council. How many times did the dispatch log report "Fight in the Tiki Hut" "assault and battery in the Tiki Hut" "disturbing the peace in the Tiki Hut?" Those were definitely ones mentioned inside that bar. When you take those in addition to the four from the specific officers, we'd submit that this is evidence for the Council to find during the relevant period of the complaint that the business was not being conducted in an orderly manner which is a 4-5-28A violation; that the business was not being conducted with satisfactory business responsibility which is the same violation. All these fights and related reports and the adverse impact on City resources and public safety, you know a business owner just can't call himself operating orderly or operating in with business responsibility when you have all that evidence in that six month window. We'd ask for those specific findings. As far as discipline I would say that council is familiar with what we did with the Horseshoe. In the event we found just one violation. Maybe something similar to that is perhaps

warranted. In that case I'll just remind you that it was a stipulated resolution whereby with that one violation they admitted. They had a \$500.00 fine; we had six months' probation; we had reporting requirements regarding fights and violence; reporting requirements regarding refusals of service; a cleaning requirement concerning the sidewalk and adjacent areas; notification requirements concerning surrounding bars if there problem patrons we wanted them to alert each other; there was a limitation on actual owners and managers being under the influence while performing ownership or employee functions; then finally there were several stipulations concerning security requirements at the doors and cameras. In the event that the Council determines more than one violation occurred here, obviously the City would recommend that a greater penalty would be due and in fashioning that sort of discipline we'd ask the Council to consider additional fine amounts per violation found. Perhaps a brief period of weekend closures as a disciplinary matter or possible restrictions of hours of operation as another method of discipline. And I'll submit it.

Mayor Johnson: Okay.

Mr. Nye: My turn?

Mayor Johnson: You bet.

Mr. Nye: First of all let me go back to him talking about the minor that the cop had seen come out of the Tiki Hut. That means nothing. My bartender's very good about not letting people underage in there. When most come in, or I shouldn't say in the middle of the night, but they are very good about carding. Just cause he's seen her walk out does not mean she was served and most likely she was not served. In fact, I'd be sure of it. Okay? Now, that's just reaching to accuse me of something that may have had happened. There's nothing there that says it happened. Second of all, we've talked about the bike rally. When the girl carded the guy she was never issued a citation because she questioned it and checked it and cop said she did a pretty good job for just being a new bartender. He said it's just going to be a warning. That shouldn't have been brought up. And then you talk about over-serving, as Tim just got up here and talked about he shoved his friend or his friend shoved him, one or the other, can't sit there and say he was too drunk. You weren't even there. All these are just accusations that none have any facts on them whatsoever. None. I'd taken three of the police reports but the dispatcher say these are fights in the Tiki Hut. Not one of them ever said there was a fight in the Tiki Hut. One is in the parking lot, one is on the sidewalk. These are just accusations. I never have understood this. Let me tell you a little about my bar. The health department and the last two years they come in, they come uninvited. They just show up. The last time they gave us a ninety-six because one of our thermometers was out. The time before that, 100%. We run a very clean bar. We really do our very best in there. Nobody in the world could be perfect but we can try our best. If there's been anything, why don't just least go back the last six months. How many calls have you had then? How many times has the Police Department sent an underage in there or people act like their drunk to see if we'll serve them? And none of them have gotten through. It's not like we don't try. We try our best. As far as I'm concerned we've been the best bar downtown since I've

had it. And where do all these accusations come from? I'm just blown away by it cause I don't understand it. And neither do my bartenders. So, and I can't see where I'd ever be disciplined when I'm doing what I think is such a good job anyways. Always have. That's all I have.

Mayor Johnson: Okay, looks like we are at the end of closing arguments and headed into deliberations by the City Council.

Mr. Stanton: I'd like to make a brief statement before you enter in to deliberations. You can go a couple of different ways. One is obviously to make a determination that the charges set forth in the complaint have not been established or proved and then dismiss the complaint. That's fairly straight forward process if that's what the Council is going to do. If the Council is going to take adverse action against the Tiki Hut's liquor license then the job is more difficult. What the Council will need to do is make specific findings. Specific factual findings based on the evidence. And those findings have to be keyed to specific incidents, specific events as opposed to just general statements like, "well, this is my general conclusion about X or Y and therefore I'm going to recommend this type of discipline." It actually has to be specific facts, specific evidence and that has to be noted in the record as a basis for imposing some form of discipline or taking some form of adverse action. And if the Council does go that way the right way to present it would be after deliberations and discussions to come up with a single motion that contains all of those findings and then makes a recommendation on the discipline or makes a statement on the discipline and then vote on that.

Mayor Johnson: Okay.

Mr. Stanton: Okay?

Mayor Johnson: Pleasure of the Council? How are we doing on time? Do you want a couple of minutes? It's ten to six. We normally like to take a break at six o'clock at regular council meetings. Should we take a ten minute break?

Councilman Schmidlein: Fine with me.

Mayor Johnson: Let's do a ten minute recess.

~~~RECESS~~~

Mayor Johnson: Call the meeting back to order. We're at the end of closing arguments and beginning of deliberations by City Council. Comments from City Council?

Councilwoman Simons: I have some. Just that I agree pretty much with Mr. Nye. Also the Chief said this that a lot of these things that were brought up cannot be directly tied to the Tiki Hut. There needs to be some personal responsibility. These people that are fighting need to be charged with this and not Mr. Nye and his bar. I do believe you are trying hard. Just the fact that the Police are called is a great thing. It's a great thing. If ever

there's a problem outside and someone picks up the phone and calls that's what we want. We don't want to discourage that in any way. At the same time though, I think bars to have to take some responsibility cause all these fights and all these people over-served, it's some bar's problem and no bar is willing to say that it was us. I do think that there are a couple of things here that can be directly tied to the Tiki Hut. The vast majority you are right. I cannot directly. You read those reports and I would have to agree. Now whether or not they were in your bar, I can't say and you didn't seem to know for sure but the vast the majority you are right. We cannot directly tie. I do think that there are some underage serving issues that can be directly tied. And possibly there's a couple of other things that bother me but I'm not sure if they are directly in the liquor code. There was an incident where your bar chose not prosecute on June 13<sup>th</sup>. I don't remember what it was. Something happened and in the end it said not to prosecute. I wish you would prosecute. I think it would help everybody. If the people knew that the bars were going to prosecute. But I do think at the very minimum there's some underage serving. I do think maybe something similar to what the other bars, what we agreed with the other bars might be appropriate. Those are my comments.

Mayor Johnson: Okay, any other comments?

Councilman Rice: Yea, I have a few. I think that we have a very big problem in terms of sales to minors. That that's simply unacceptable and it's a clear violation of the Liquor Code. I know when the sting operation, what I'm understanding is that there was a warning issued. Given all of the circumstances that we've been considering in downtown Elko for the last two years and the entire community has been very aware of and all of the incidences that have occurred in or in the vicinity of the Tiki Hut. When you add to that a verified sale to a minor by one of their employees that's a problem and clearly a violation of the code. In the incident that occurred on 6/16/12 there was a minor loitering in the bar and there is circumstantial evidence that there could have been a sale to a minor, which I guess in this particular process I'm not prepared to say there was a violation there but Mr. Nye did agree that that incident did occur exactly as it was described in the Police Report. He has acknowledged there was a minor loitering in the bar. He also acknowledged a minor loitering in a bar which again is simply unacceptable in terms of the Liquor Code. In Exhibit 6 an incident that occurred on 7/17/12 in regards to a battery, there was a criminal report filed. I understand from the testimony of the bartender who was involved that every thing's better now but at the time there it was a serious enough matter that there was a criminal report filed. The victim at the time thought it was serious enough to file a criminal report. That occurred in the bar and it involved the bartender as well which is a violation of the liquor code in terms of conducting the premises in a clean and orderly manner. And also a violation of some other NRS that is not connected to this particular hearing. I also and I am dismayed that Mr. Nye doesn't understand where all of this is coming from given the conversations and the work that's been ongoing by the police and the discussions that have been ongoing in this chamber for the last two years. Sort of adding to Mandy's observations in regards to not prosecuting during when there was an incident with throwing a beer bottle inside the premises, that again that Mr. Nye's not taking responsibility for his establishment and not operating it in a clean and orderly manner. I think that there, specifically, more than

circumstantial but actually clearly evident that on 6/16/12 there was a minor loitering in the bar. On 6/15/12 there was a liquor sale to a minor. And on 7/17/12 there was a battery that occurred inside the bar that involved the bartender. There are, it seems to me, at least three very serious violations of the liquor code that have been presented to us tonight.

Mayor Johnson: Okay, other comments?

Councilman Schmidlein: You know, I kinda look at Exhibit 3 and I feel Mr. Nye should have brought some ammunition with him. The reason I'm throwing this out here, he had mentioned to all of us that he's got sixteen cameras. I think for that Exhibit he should have brought forth some photos indicating that they had carded the gal and everything else. He could have prevented that specific exhibit. With him not bringing that evidence forward, you know, I'm under the assumption they were serving the seventeen year old in the bar. You know, Exhibit 4, if somebody broke my bottle of booze or my mirror I would agree 100%. I would prosecute to the fullest of the law and a lot of issues we are having downtown is the owners are not willing to step forward to the officers and try to prosecute these people. I think it would really help clean up the establishment there without a doubt. The sting operation, once again, that's underage drinking, they're getting pretty good about finding several other establishments throughout town but I know we are focusing on this here. You know, and they brought forward a lot of over-serving so I think those are areas we should focus on.

Mayor Johnson: Okay.

Councilman Perry: I guess I'll have been sitting here scratching out this, some notes here. And, uh, knowing that what we have to have deal with here is fairly specific. This is a little bit different than our normal council meeting. We were talking about the Liquor Control Code. Going through these in detail, listening to the testimony on both sides there, I think there's enough evidence, at least I believe, to conclude a violation of 4-5-28B1 and 3 in the police reports in Exhibit 2 and that was the incidents of October 14, 2012. And 4-5-28 is the 1 and 3 are establishment to be clean and orderly president of certain persons prohibited and B1 is a person who is intoxicated and clearly they were intoxicated. And 3 is any person whose conduct is tumultuous or offensive or who is threatening, traducing, quarreling, challenging to fight or fighting on or in the immediate vicinity of the licensee's premises. I think clearly there was enough evidence to conclude that. The second I find enough evidence to conclude the violations of 4-5-26 which is loitering by a minor. I didn't find enough evidence to conclude that the minor was actually drinking there and apparently there was no video provided to see that but clearly if the minor was coming out of the bar they were loitering. I find there is enough evidence in Exhibit 4 to conclude a violation of 4-5-28. Exhibit 4 specifically those incidents there related to the incidents that Sergeant Locuson had mentioned with the three male patrons who became belligerent after the drinks were refused. Clearly they were drinking before and became belligerent. There's a reason why they did and I think that gets back to serving a person who is intoxicated. 4-5-28 B1 and B3. The fourth item I have here is I find evidence in Exhibit 6 to conclude a violation of 4-5-28 again. And

Exhibit 6 specifically is the incidents that Officer Spring had mentioned regarding the alleged battery which I, again I believe, is evidence of a person who is intoxicated or a person whose conduct is tumultuous or offensive. Um, so of the four (I'm buried in papers here so bear with me) of the four complaints filed by the Chief of Police, um, on March 22 of this year. I'm missing that page here, I guess I had it here somewhere. Maybe it's what I wrote on? Okay, here it is. The four specifically, or the two of the four, I believe there's enough evidence to conclude that there's a violation of the Elko Liquor Control Code.

Mayor Johnson: Okay. The ones that stand out for me are the seventeen year old and cut off after they didn't have any money, I think is an over-serving. And then of course, the incident at the Motorcycle Jamboree with the carding. So I would say there's at least three there in violation of.

Councilman Rice: Rich, did you mention the Exhibit 5, the sale to the minor in that sting operation?

Councilman Perry: I did not mention that. Actually because, although I don't disagree it's a violation there was a warning given there at that time and I was actually downtown that particular day and recall what they were doing at the time.

Councilman Rice: So, um, well, I think Rich, that you laid it out quite well. Um, and though I have some serious concerns about the sale to a minor I understand your position on that. So what we are actually looking at, in my opinion, are four separate violations, Rich?

Councilman Perry: Four is the number I had, yes. Of the ones presented.

Councilman Rice: Ya.

Mayor Johnson: Okay.

Councilwoman Simons: So, Rich, you have the underage...

Councilman Perry: The underage female that came out and was clearly intoxicated.

Councilwoman Simons: And you have the incident where they threw the bottle and it broke at the bar?

Councilman Perry: Yes.

Councilwoman Simons: And what were your other two?

Councilman Perry: Oh boy, Mandy.

Councilwoman Simons: I was listening.

Councilman Perry: Okay, let me find those notes again.

Councilman Schmidlein: It was 4-5-28 you mentioned.

Councilman Perry: Yes, actually three of those were violations of 4-5-28 and one is a violation of 4-5-26 which is loitering by a minor. And the violations of 4-5-28 relate to serving someone who is intoxicated and the other is any person whose conduct is tumultuous or offensive or who is threatening, traducing, quarreling, challenging to fight or fighting on or in the immediate vicinity of the licensee premises.

Councilwoman Simons: I feel like, personally, that some of those did happen but they did try to take care of them. The tumultuous one. I'd agree with the others. I agree technically speaking is a violation but I kinda feel like they did attempt to take care of it and be responsible about it but the others for sure I would agree with that statement that Rich has.

Councilman Perry: I think John framed it well. We understand there's been problems down there and you know a little over a year ago after numerous complaints by citizens here, we began the discussions on the Liquor Control Code which many bar owners came. There were four or five meetings there where there was a good dialog. And that according to what the Police Chief has told me, some of that has gotten better down there as far as the number of calls go but in this case what we are asked to do tonight is to rule on these things that are presented. That's what I'm trying to do and if you are ready for a motion I will do one.

Mayor Johnson: Absolutely, yea, that would be great then we can work on that.

Councilman Perry: Okay.

Councilman Rice: So we have a motion on the violations and then we procedurally then we look at...

Mayor Johnson: We can do what we agree on for violations then we can work on the fine side of it.

Councilman Perry: Let me, this won't be in the form of a motion but I will just frame out what thinking here and I'm reading basically most of this from the agreement of the other two establishments that made a settlement agreement with the city although it has to be a little different here. So the first item here would be a fine payable to the City's Clerk's office in the sum of \$500.00; a six month probation during which time the licensee must comply with the terms and conditions.

Mayor Johnson: Rich, I thought we were going to move into the what we agreed as a council as to what was the violation. And then we can work on the findings if we agree.

Councilman Perry: So, a motion on the violations. Um, **we find that there's enough evidence to conclude a violation of Elko Liquor Control Code item 4-5-28-B 1 and 3 in Police Reports in Exhibit 2. We find enough evidence to conclude violations of Elko Liquor Control Code item 4-5-26 in Exhibit 3 and the testimony given. We find there is enough evidence to conclude a violation of Elko Liquor Control Code 4-5-28 in Exhibit 4 and the evidence given. We find there is evidence to conclude a violation of Elko Liquor Control Code 4-5-28 in Exhibit 6 and the evidence given.**

Councilman Rice: **Second.**

Mayor Johnson: Okay. Alright, what I have is we got a motion on the floor, a violation of 4-5-26 which is supported by Exhibit 3 which is the loitering of a minor. A violation of 4-5-28 which is supported by which Exhibit? I have three violations in the 28; Exhibit 4, Exhibit 6. What was the first one?

Councilman Perry: Exhibit 2, Exhibit 4 and Exhibit 6.

Mayor Johnson: Okay Exhibit 2 again was which incident? Just briefly.

Councilman Perry: The incidents of October 14, 2012.

Mayor Johnson: And that was the bottle and that was from Officer Locuson?

Councilman Perry: The incidents of that night were the three fights in the vicinity outside the bar.

Mayor Johnson: Fights in the vicinity, okay. And then violation supported by Exhibit 4? Just a brief on that.

Councilman Schmidlein: That was the liquor bottle.

Mayor Johnson: That was the liquor bottle? With Officer Locuson, right? Okay. And then the last Exhibit 6?

Councilman Rice: That was the battery.

Mayor Johnson: Okay, so we have a motion of the floor and we have a second. Further discussion? No further discussion? All those in favor of the motion as presented say aye.

Councilman Perry: **Aye.**

Councilwoman Simons: **Aye.**

Councilman Schmidlein: **Aye.**

Councilman Rice: **Aye.**

Mayor Johnson: Those opposed vote no. **I'll vote aye. Okay so that motion passes.** Okay, now the fine.

Councilman Perry: Do you want me to make a go at this for discussion?

Mayor Johnson: Sure.

Councilman Perry: And you know, just let me say this isn't intended to change the culture downtown. It's not intended to be punitive but it's what is also, for the most part, what the other two establishments that were charged with similar violations agreed to in a settlement.

- 1) a fine payable to the City Clerk's office of in the sum of \$500.00 within ten (10) days of the council approval of this agreement. Well forget the agreement part, that doesn't count. Let me read, a fine payable to the City Clerk's office in the sum of \$500.00 within ten (10) days.**
- 2) a six month probationary period during which time the licensee must comply with the terms and conditions set forth herein.**
- 3) during the period of probation the licensee has the following reporting duties: all incidents of fights or violence or threats of the same within the licensed premises or in the vicinity of the premises of which the licensee gains knowledge; if the events are ongoing a report shall be made to dispatch otherwise through a report may be made at earliest convenience by contacting the Elko Police Department during regular business hours; on a weekly basis licensee will report in writing to the Chief of Police the number of times and circumstances for each instance for which the licensee and his employees refuse service to a patron or "86" persons from the premises; concerning these reports, licensee is not required to provide names or personal information of the subjects of the report and the data obtained solely from such reports may not be used as a basis for subsequent license disciplinary action; for failure to make such reports may be constitute a violation of the agreement.**
- 4) during the period of probation the licensee will clean the sidewalk and immediate adjacent right-of-way and alley of areas associated with the footprint of business premise by 8:00 am each day following the day in which the licensee was open to the public.**
- 5) during the period of probation the licensee will notify in writing the following bars in the event persons are "86'd" or refused service for being overly intoxicated, violent, threatening or improperly armed: Horseshoe Club, Goldies, Stray Dog, La Cantina, Casanova, Silver Dollar, G Bar, Good Time Charlees, Commercial Hotel and Stockmens.**
- 6) during the period of probation licensee present in performing employment or ownership functions at the premises of the licensee may consume alcohol in the premises but shall not be under the influence of alcohol or drugs while on the premises. For purposes of this agreement, under the influence shall have the same meaning as described to him in the DUI laws of the State of Nevada. This provision shall not impact any rights to test otherwise permissible by law or any voluntary testing.**
- 7) During the period of probation, licensee shall provide for security at the premises to include one personnel at all entrances and exits of the premises whenever licensee is in operation from the bar hours from 9:00 pm until 8:00 am on all Thursdays, Fridays and Saturdays. A person shall not be required at any exit which is not**

**allowed to be used as an entrance and which has a door which can only be opened from the inside.**

**8) security cameras to be installed and record areas recorded open to patrons for a period of at least eight (8) hours and the recordings of which are maintained for at least seven (7) calendar days.**

**9) licensee shall ensure that no glass bottles or containers are removed from premises during these hours and thus check identification of all persons entering the premises.**

**10) and the final fine that I find is that the licensee should be closed for a period of seven days at which time after that they can reopen. Those seven (7) days would start Friday.**

Mayor Johnson: Beginning this Friday?

Councilman Perry: Yup.

Mayor Johnson: August 9<sup>th</sup>.

Councilman Perry: Which would open the following Friday.

Mayor Johnson: Reopen on August 16<sup>th</sup>?

Councilman Rice: 16<sup>th</sup>, yea.

Mayor Johnson: Okay. Is that a motion?

Councilman Perry: Yes.

Mayor Johnson: Is there a second?

Councilman Rice: **I second.**

Mayor Johnson: Further discussion?

Councilwoman Simons: I'm not sure they're offenses are that much worse here. I mean they're serious. They are all serious. But that much more substantial than some of the other bars? Closing seven days is highly punitive. I'm just not sure if I am on board for closed for seven days. All the other ones I got lined. I think that's perfect. That's a huge loss and it's not necessarily hurting the people, the individuals that committed a lot of these crimes. They will just go to a different bar. I'm not sure. I would kind of like to negotiate that one if possible.

Mayor Johnson: Okay, more discussion?

Councilman Rice: Well, I'm on board with it. I think that there are four times as many violations we found in this one where there's evidence that shows they violated four

different areas. I think it's very serious when two of them involve minors. I agree to the closing period. If we were not to close it for a period of one week then I would suggest that we increase the monetary fines substantially. Given the fact in the other cases there have been single violations and we have agreed to four instances of violations but actually there are a number more there. I also go back to my statement earlier where Mr. Nye seems to be in denial that there's a problem in his bar and there is a bit problem at his bar.

Councilwoman Simons: Mr. Stanton, all the other bars that we have agreements with, there's only one issue?

Mr. Stanton: There's only one issue?

Councilwoman Simons: Only one, I'm sorry, what's the word I'm looking for? Only one violation?

Mr. Stanton: I'm going to defer to Mr. Coyle. He was actually the one who dealt with those.

Councilwoman Simons: I guess I don't remember. I thought there were multiple.

Councilman Rice: I was not here for the last settlement.

Mr. Coyle: Let me just address that. The verified complaint on the two establishments had a similar amount of data that went with them and so, you know, it involved definitely more than one instance. What happened was in the negotiations they agreed to admit to one violation and so that was why that was included.

Councilwoman Simons: Okay, I understand. Thank you.

Councilman Schmidlein: What I'd like to throw out is, on the seven day, I feel it's a little harsh as well. I would like to see it closed on Friday, Saturday and Sunday night because that will hit the pocket book very well on a weekend. And then also on Exhibit 3 for the minor loitering/intoxicated, I would like that to be a \$500.00 fine by itself and for not prosecuting the people throwing beer bottles at the bar back, I would like that to be a \$500.00 fine. And the purpose behind that is we need these people arrested. If they broke my window at my house I would prosecute. I know Don Zumwalt, Chief Zumwalt, has asked a lot of bar establishments downtown, when there is fights there is no names presented and we need all the bars to step up and start giving out names so we can get rid of the trash in the downtown area.

Mr. Stanton: And let me mention something that the penalties that the council decides upon have to be keyed to specific factual findings that you previously voted on. And I don't believe the not prosecuting was one of the findings.

Councilwoman Simons: So we can't just institute the \$500.00 fine?

Councilman Rice: Well, that was the over-serving but Exhibit 4, but we did find a violation that there was over-serving in that particular case.

Mr. Stanton: That would be different because the not prosecuting isn't really keyed to the liquor control code.

Councilman Schmidlein: I want to go \$500.00 on the over-serving.

Mayor Johnson: For that particular incident supported by Exhibit 2?

Councilman Schmidlein: That's Exhibit 4.

Mayor Johnson: Exhibit 4. Okay so you're looking at \$500.00 there.

Councilwoman Simons: I would be on board for that as a compromise.

Mayor Johnson: **Okay, so we can do this as an amendment to the main motion to strike seven (7) and insert three (3) and add \$500.00 fine for violation of 4-5-26 loitering and \$500.00 fine for the violation of 4-5-28 supported by Exhibit 4.** Is that an amendment to the main motion? Is there a second?

Councilman Rice: Rich, do you agree to that?

Mayor Johnson: It's just an amendment to the main motion.

Councilwoman Simons: **I'll second that.**

Mayor Johnson: Okay, so the main motion has been amended to strike seven (7) days and insert three (3) and then add a total of \$1,000.00 in fines, \$500.00 specific to the loitering and \$500.00 specific to violation of 4-5-28 Exhibit 4. Further discussion of the amendment?

Councilman Rice: To be clear, with the amendment, then if the amendment passes then there will be a total of \$1,500.00 fine?

Councilman Schmidlein: \$1,000.00

Councilwoman Simons: Oh, \$1,000.00?

Councilman Rice: Because there was a \$500.00 fine.

Councilwoman Simons: Can we do that? Can we just have a \$500.00 fine or does it have to be keyed to one?

Mr. Stanton: Well, the penalty can be one of the conditions that is imposed on having the liquor license after making these specific factual findings.

Councilwoman Simons: Yea, it's \$1,500.00 total.

Mayor Johnson: Yea, if it passes. And then of course we vote again on the main motion as amended if the amendment passes. Any further discussion on the amendment? All those in favor of the amendment say aye.

Councilwoman Simons: **Aye.**

Councilman Schmidlein: **Aye.**

Mayor Johnson: Those opposed vote no.

Councilman Perry: **No.**

Councilman Rice: **No.**

Mayor Johnson: **I'm going to vote aye. Amendment passes.** Okay, now we are back to the main motion as amended which includes closing for three (3) days, a \$500.00 fine as presented in the main motion, and an additional \$1,000.00 fine as presented in the amendment. Is there any further discussion?

Councilman Rice: Would there be an appetite for to further amend the motion for a four (4) day closure? **I'd like to move to amend, for an additional amendment to the motion to close beginning Thursday, August 9<sup>th</sup> and remaining closed until Sunday, August 12<sup>th</sup>.**

Mayor Johnson: Okay, is there a second to the amendment to change it from three as amended to four?

Councilman Perry: **Yea, I'll second that.**

Mayor Johnson: Okay, so it's been moved and seconded to amend the main motion to change from three to four days of closure.

Curtis Calder: Mr. Mayor, correction, Thursday, August 8<sup>th</sup> through Sunday, August 11<sup>th</sup>.

Councilman Rice: Oh, yea.

Mayor Johnson: Okay, 8<sup>th</sup> through the 11<sup>th</sup>. Is there any further discussion of the amendment to the motion?

Councilman Schmidlein: I'd just like to ask, you know, what is the big difference with the one extra day, if you don't mind?

Councilman Rice: Well, because... I agree that seven days, I think a seven day closure is appropriate. In the earlier discussion I said if we didn't the seven days closure I'd want a substantially higher fine. Though I am satisfied with a \$1,500.00 total fine, I think an additional day of closure and Thursday night is actually a big night and I think that it's

warranted in terms of the violations that have occurred. Again, I go back to two instances of serving minors. And, again, going back to Mr. Nye's seeming denial that he's done anything wrong. And he has. The bar has not been operated in accordance with our liquor laws.

Mayor Johnson: Okay. Discussion of the amendment for four days of closure?

Councilman Perry: I guess I concur with John. I still think seven days is more appropriate.

Councilman Schmidlein: One additional item I want to throw out, it's not the dates we have here but the night I went around on the drive-along there was a fight in the Tiki Hut. So with that being said I'll honor the four days.

Mayor Johnson: Any further discussion? All those in favor of the amendment which is to have it closed for four days say aye.

Councilman Perry: **Aye.**

Councilwoman Simons: **Aye.**

Councilman Schmidlein: **Aye.**

Councilman Rice: **Aye.**

Mayor Johnson: Those opposed vote no. **I vote aye, motion passes.** Now we're back to the main motion again as amended. Is there further discussion on the main motion as amended which again is total \$1,500.00 fine with four days closure?

Councilman Perry: Beginning on, which is tomorrow at what time?

Mayor Johnson: I would assume midnight.

Councilwoman Simons: Will that be all day tomorrow?

Councilman Rice: Yea, all day beginning at midnight. The 8<sup>th</sup> starts at 12:01.

Councilman Perry: I don't think, I think probably he's got somebody on shift right now. I think that it's not fair.

Councilman Rice: I think a shift runs from 4:00 till midnight.

Councilman Perry: How about if it's midnight Thursday night because that gives them a day to make their shift plans.

Councilman Rice: Or how about 5:00 Thursday afternoon?

Councilman Perry: When is your shift change, Mr. Nye?

Mr. Nye: 8:00, 12:00 and 4:00.

Councilman Perry: 8:00, 12:00 and 4:00.

Mr. Nye: 8:00 in the morning, 4:00 in the afternoon and 12:00 midnight.

Councilman Perry: Then probably 8:00 in the morning would make more sense.

Mayor Johnson: Okay, so let's get another amendment to the main motion which qualifies the time on Thursday at 8:00 am if you would.

Councilman Rice: **Well, I would offer an amendment to the motion that the bar be closed at 8:00 am on August 8<sup>th</sup> through Midnight on August 11<sup>th</sup>.**

Mayor Johnson: Okay, is there a second?

Councilman Perry: **Second.**

Mayor Johnson: Does that still stay the four days?

Mr. Coyle: Well...

Mayor Johnson: It's not over?

Mr. Stanton: Approximately.

Mayor Johnson: It's okay?

Councilman Schmidlein: It's just under.

Mayor Johnson: Okay, if it's under four days. Alright.

Mr. Stanton: You are clarifying your prior motion.

Mayor Johnson: Perfect. Any further discussion? All those in favor say aye.

Councilman Perry: **Aye.**

Councilwoman Simons: **Aye.**

Councilman Schmidlein: **Aye.**

Councilman Rice: **Aye.**

Mayor Johnson: Those opposed vote no. **I vote aye, motion passes.** Okay, so we are back again to the main motion as amended which qualifies the exact time the closure will begin. Is there any further discussion on the motion as amended? All those in favor say aye.

Councilman Perry: **Aye.**

Councilwoman Simons: **Aye.**  
Councilman Schmidlein: **Aye.**  
Councilman Rice: **Aye.**

Mayor Johnson: Those opposed vote no. **I vote aye, motion passes.** Okay? Did we qualify what we needed to?

Mr. Stanton: Yes.

Mayor Johnson: Okay, very good. Is there any further business on this agenda item?

Mr. Coyle: I believe that address of the verified complaint.

Mayor: Okay, so we'll move on from new business to comments by general public.

#### **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**

Richard Robinson, 563 12<sup>th</sup> Street, is the director of Northeast Operations for the Gaming Outfit. The other locations didn't have any gaming. In the morning there's a good possibility he will lose his license because he will be closed.

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

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Mayor Chris Johnson

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Shanell Owen, City Clerk