

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

SS December 18, 2018

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 4:00 p.m., Tuesday, December 18, 2018.

This meeting was called to order by Mayor Chris Johnson.

## CALL TO ORDER

## ROLL CALL

**Mayor Present:** Chris J. Johnson

**Council Present:** Councilman John Rice  
Councilman Robert Schmidlein  
Councilwoman Mandy Simons *arrived 4:02pm*

**Council Absent:** Councilman Reece Keener

**City Staff Present:** Curtis Calder, City Manager  
Scott Wilkinson, Assistant City Manager  
Ryan Limberg, Utilities Director  
Kelly Wooldridge, City Clerk  
Dennis Strickland, Public Works Director  
Cathy Laughlin, City Planner  
Jonnye Jund, Administrative Services Director  
Candi Quilici, Accounting Manager  
Susie Shurtz, Human Resources Manager  
Ben Reed Jr., Police Chief  
Matt Griego, Fire Chief  
Jack Snyder, Deputy Fire Chief  
John Holmes, Fire Marshal  
James Wiley, Parks and Recreation Director  
Jim Foster, Airport Manager  
Bob Thibault, Civil Engineer  
Jeff Ford, Building Official  
Dave Stanton, City Attorney  
Mike Haddenham, WRF Superintendent  
Diann Byington, Recording Secretary

## 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**

Mike Lostra, 930 College Ave., Lostra Engineering, spoke about the report on the pool (Exhibit "A"). He stated: "There is some structural damage to the northern wall. Where the building is 50 years old, you will see that all kinds of things have happened and they wanted to make sure the damage was isolated to the northern wall." He believes the failure on the northern wall is isolated and there was no visual evidence that the building was shifting or moving. The report outlines a conceptual fix without a budget.

Mayor Johnson read a Proclamation in Recognition of the Sesquicentennial Birthday of Elko, Nevada, December 28, 2018. He presented a copy of it to Jan Peterson, City Sexton.

## **I. APPROPRIATIONS**

- D. Review, consideration, and possible issuance of final acceptance for the WRF Emergency Diesel Generator (Equipment), and matters related thereto. **FOR POSSIBLE ACTION**

Smith Power Products Inc. (Smith) was awarded this bid with a scheduled delivery date of July 2, 2018. The generator arrived on site September 24, 2018.

The generator was delayed in part due to manufacturing of the generator. Additionally, and to a greater degree, the generator was delayed when the subcontractor Koontz-Wagner, who was tasked with building the weatherproof enclosure and fuel tank, went out of business. This then resulted in the generator being rerouted and rush shipped to the Midwest for a rush build of the enclosure, fuel tank, and appurtenances, then rush shipped back to Elko, all at Smith's expense.

When the unit arrived, the enclosure varied from the original design specs which the concrete pad had been designed around. To rectify this matter, Smith agreed to pay for an enlarged concrete pad. This change resulted in additional delays.

The generator is currently on site and operational. Smith has agreed to reimburse the City for the additional concrete pad expense (24,200.00) as well as LD's in the amount of \$29,175.00 (10% of the equipment cost as limited by the contract) to be deducted from their invoice. RL

Ryan Limberg, Utilities Director, introduced Aaron Walquist from Smith Power Products in the audience.

Mayor Johnson said liquidated damages for him are for incentive for the contractor to get the job done. In this case Smith had some issues but they owned it and reimbursed the City for the cost increases. They stayed with the job as much as they could. He would like to consider eliminating the LDs on this project.

Councilman Schmidlein said you need to be careful waiving LDs. What impacts did the City have regarding the LDs, if at all?

Mr. Limberg answered there wasn't an impact to the City. The old generator still worked. From the dollar side, Smith has squared it with the City. With the time delays, we were able to use what we had and not be put out by not having the new generator.

Dave Stanton, City Attorney, said the LDs are to compensate the City for delays. It is specified in the contract that the LDs are presumed if the deadline is not met. The test is not whether or not there is substitute facility or a substitute piece of property the City can put into use. If there is a LD provision in the contract and a deadline that triggers it, there is a presumption that the City is losing out if the deadline is not met. Our contract is with Smith Power Products and they were expected to deliver within a specific period of time. How they went about doing that was up to them. They have the ability to choose a subcontractor and they happened to choose poorly, but that was on them. The fact is they did not deliver on time and LDs were triggered because the deadline was not met. If there is going to be some sort of good faith exception, that is going to make is difficult to apply that waiver equally across the board whenever this comes up. We, as a public entity, have an obligation to treat contractors in a similar way.

Mr. Limberg said we go through the LDs frequently with contractors. There is always some disagreement, etc. This is the first time in his career that he has not seen that. Smith stepped up and said they were responsible for the concrete pad. He commended Smith for stepping up and saying it was their mistake. Their name was more important than the dollars.

Stephan Beck, 532 9<sup>th</sup> Street, said when the City attorney said triggered liquidated damages and then it sounds like the situation was handled in good faith by the contractor, and there is no impact on the City, he wonders why we would have LDs. He thinks good faith efforts should be rewarded and taken into consideration.

Councilman Schmidlein asked how many days were applied to the LDs.

Mr. Limberg answered we are at \$500 a day so the \$29,000 would be roughly 60 days.

Councilman Rice said we create a slippery slope if we waive the LDs. A contract is a contract. He fears setting a precedent.

Bill Hance, 724 5<sup>th</sup> Street, asked if the wording in the contract was "May" or "Shall."

Mr. Limber answered, "May."

Mr. Hance felt there was some discretion in the contract with the word "May." Did Smith keep you updated during the process?

Mr. Limberg answered they kept him advised but he let Smith know there was a contract with a firm date and they needed to work it out. They met with him during the Mine Expo and explained the situation with the subcontractor and that there would be delays.

Mr. Stanton said the wording is always “May”. The issue is equivalent treatment. In this case, the contractor is acknowledging that the City is entitled to the LDs.

Chip Stone said having not been in construction, is there a mechanism set up that allows the contractor to file an insurance claim and get reimbursed?

Aaron Walquist, Smith Power, said they could file an insurance claim on the LD’s but not on the concrete pad or the other extra costs.

Mr. Stone thanked him for handling it the way he did.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to accept WRF Emergency Diesel Generator (equipment) project with Smith Power Products, in the amount of \$291,750 minus \$24,200 for additional concrete, and minus \$29,175 in liquidated damages, for a total \$238,375.**

*The motion passed unanimously. (4-0)*

## **II. UNFINISHED BUSINESS**

- A. Review, consideration, and possible action to conditionally approve Final Plat No. 11-18, filed by Parrado Partners LP., for the development of a subdivision entitled Great Basin Estates, Phase 3 involving the proposed division of approximately 9.650 acres of property into 38 lots for residential development within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located generally northeast of Flagstone Drive between Opal Drive and Clarkson Drive (APN 001-633-030). Preliminary Plat was recommended to Council to conditionally approve by Planning Commission May 3, 2016 and conditionally approved by Council May 24, 2016. The Planning Commission considered this item on September 6, 2018, and took action to forward a recommendation to Council to conditionally approve Final Plat 11-18. CL

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to table this item.**

*The motion passed unanimously. (4-0)*

## **III. NEW BUSINESS**

- A. Review and consideration of a request from Mr. Rob Fitzgerald of Surebrec Holdings, LLC for a Special Reimbursement Agreement as defined in City Code 9-1-35 (E), for reimbursement of a sewer main and boring costs within the I-80 Right of Way, and matters related thereto. **FOR POSSIBLE ACTION**

Mr. Fitzgerald is the owner of a parcel of land and wishes to develop. In order to do so, Mr. Fitzgerald needs to install sewer service. Currently there is not a viable

means of discharging sewer from the site. In order to do so, a sewer main would need to be installed under I-80 or a sewer lift station would need to be installed.

Staff vastly prefers a gravity sewer main under I-80 when compared to a lift station alternative. The sewer main bore is proposed to be located at a low point where it could be used by multiple parcels. RL

Ryan Limberg, Utilities Director, showed the location on the overhead screen. They are not asking for reimbursement for extending any sewer mains on their property, but they are asking for reimbursement where the sewer main crosses I80. This scenario resembles the situation we had at Exit 298 with the waterline. There was a cost estimate in the packet.

Councilwoman Simons asked if this was similar to the truck stop situation.

Mr. Limberg answered yes.

Councilman Schmidlein stated you are requiring a 24-inch casing, 12-inch main. Multiple developers would be able to hook onto this. Is the 24-inch casing necessary and how much utilization will happen with full buildout? A 12-inch sewer main is a fairly good size because most residential neighborhoods only require 8.

Mr. Limberg said what they tried to do is bring this forward to see if Council is in support of it before they go negotiate an agreement. Development may change and this is all based on assumptions. It is better to make it too big than just the right size.

Councilman Schmidlein thought the City should be on the hook for the upsize since the developer would not need that much.

Mr. Limberg said that is in City Code and they do that all of the time.

Scott Wilkinson, Assistant City Manager, thought an important consideration is that we can put a lift station there and bring it back to Ruby Vista and put all of that cost on the developer but staff prefers that gravity sewer which require a bore under the freeway.

Mayor Johnson thought it helped that this serves more development. Can staff redraft the agreement?

Mr. Wilkinson answered it is something that won't occur if they don't move forward with development.

Mr. Limberg said the developer would like to move forward with the project in the spring but before that, they wanted to see if the City would consider an agreement.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilman Rice, to direct staff on a special reimbursement agreement and bring back to Council with the understanding the developer will be on the hook to offset whatever the lift station costs would be, as well as, whatever the sewer main installation of a minimum of 8-inch that they**

**absorb that cost. That would be the footage under the I80 corridor. The City would be on the hook for all of the oversize and the bore.**

After the motion and before the vote, Mr. Limberg said the 8-inch costs under I80, do you want that subtracted out?

Councilman Schmidlein answered he would like the developer to pick up the costs for the 8-inch and we would pay for everything above it and we will pay for the casing and bore. As other people come online, we can collect the connection fees. That is a good place to start.

Luke Fitzgerald, 207 Brookwood Drive, said they would have to look at the cost and right now, he doesn't see any problems. He will work with Mr. Limberg on an agreement.

**Council voted on the motion.**

*The motion passed unanimously. (4-0)*

- B. Review, consideration, and possible recommendation to City Council for Revocable Permit No. 5-18, filed by Elite Storage & R.V., LLC. to occupy a portion of 12<sup>th</sup> Street right-of-way to accommodate a sign, and matters related thereto. **FOR POSSIBLE ACTION**

Elite Storage & R.V. LLC. is currently under construction on their storage units at the intersection of 12<sup>th</sup> Street and Opal Drive. If approved, this will be the location of their sign for the business. CL

Mayor Johnson disclosed he owns a ministorage business and abstained from the discussion.

Mayor Pro Tem Rice took over the agenda item.

Cathy Laughlin, City Planner, explained the application.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Schmidlein, to approve the Revocable Permit 5-18 for a sign in the 12<sup>th</sup> Street Right-Of-Way, subject to execution to a standard License Agreement between the applicant and the City of Elko.**

*The motion passed. (3-0 Mayor Johnson abstained.)*

#### **IV. RESOLUTIONS AND ORDINANCES**

- A. First reading of Ordinance No. 838, an ordinance approving an amendment to the development agreement between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada ("City"), and Copper Trails LLC, a Nevada limited liability company ("Owner"), specifically to add Phase 2 of the Copper Trails subdivision and impose a bottom of finished floor elevation for all future placement of principal building sup-gradient of the Eight-Mile drainage easement of two feet higher than the back of curb elevation as measured at the front lot line adjacent to the street of record, and to direct Staff to

set the matter for second reading, public hearing and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to N.R.S. 278.0205 and Section 3-2-26(F) of the City Code, Council may amend or cancel binding development agreements by mutual consent of the parties to the agreement or their successors in interest if it finds that the amendment to the agreement is consistent with the Master Plan. The amendment shall be approved by adoption of an ordinance. In this instance, the owner has requested the City amend the approved development agreement and Staff is in agreement. SAW

Ms. Laughlin explained this is the 2<sup>nd</sup> Amendment to the Copper Trails Development Agreement. We have a master plan of the entire area and this amendment will include the expansion into Phase 2. There is also a zone change that has been applied for. She recommended moving to public hearing and second reading.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to conduct first reading of Ordinance No. 838 and direct staff to set the matter for Public Hearing, Second Reading and possible adoption.**

*The motion passed unanimously. (4-0)*

## **V. PETITIONS, APPEALS, AND COMMUNICATIONS**

- A. Review, consideration, and possible action to accept a petition for the vacation of 5' of the existing 10' public utility and drainage easement along the southwesterly lot line, parcel referred to as APN 001-61J-028, filed by Koinonia Construction and processed as Vacation No. 4-18, and matters related thereto. **FOR POSSIBLE ACTION**

The applicant has requested a vacation of half of the existing easement due to the irregularity of the parcel shape and setbacks requirements. CL

Ms. Laughlin explained the petition.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to accept the Petition for Vacation and direct staff to commence the vacation process by referring the matter to the Planning Commission.**

*The motion passed unanimously. (4-0)*

- B. Consideration of a request from Ms. Callie Tregidga to hold the "Relay for Life" Event in the Elko Main City Park (area 10) on May 18<sup>th</sup> and 19<sup>th</sup>, 2019, including the extension of the curfew from 11:00 P.M. on May 18<sup>th</sup> until 8:00 A.M. on May 19<sup>th</sup> and authorization to park one (1) RV Trailer overnight, and matter related thereto. **FOR POSSIBLE ACTION**

A letter from Callie Tregidga, Director of Operations, Hilton Garden Inn, has been placed in your packet for your review. CC

Angela West, 3850 E. Idaho Street, Elko Relay for Life, explained the last two years, the relays have had scheduling conflicts with the high school. This is an overnight event. She explained what the organization does for cancer patients in Elko. She feels area 10 is an ideal area to hold this event.

Councilman Rice thought it would be great to have a path around the Main City Park. It would be good for future relays

Dave Stanton did not think they needed to do anything for the curfew. It is already covered in the code.

Ms. West said the park closes at 11pm and they would need approval to keep it open.

James Wiley, Parks and Recreation Director, said the parks do close at midnight. This is an overnight event so we would be giving authorization to keep the park open. They would also like to have an RV parked overnight.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to approve a request from Relay for Life to hold an event in the Elko Main City Park area 10, on May 18-19, 2019 and permit the park to extend its hours until 8:00 a.m. and allow for one RV trailer to be parked there overnight in area 10.**

*The motion passed unanimously. (4-0)*

- C. Ratification of the Police Chief issuing a 60-day Temporary Retail Liquor License and issue a Regular Retail Liquor License, to Sartini Gaming LLC / Sean T. Higgins DBA Gold Bar, located at 3600 West Idaho Street, Elko, NV 89801, and matters related thereto. **FOR POSSIBLE ACTION**

Ben Reed Jr., Police Chief, explained this is the new Golden Gate gas station but it is for the Casino side of the business with different oversight.

**\*\* A motion was made by Councilman Schmittlein, seconded by Councilman Rice, to ratify the Police Chief issuing a 60-day temporary retail liquor license and issue a Regular Retail Liquor License, to Sartini Gaming LLC/Sean T. Higgins DBA Gold Bar, located at 3600 West Idaho Street in Elko.**

*The motion passed unanimously. (4-0)*

## **I. APPROPRIATIONS (Cont.)**

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to approve the general warrants.**

*The motion passed unanimously. (4-0)*

- B. Review and possible approval of Print ‘N Copy Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to approve the Print ‘N Copy warrants.**

*The motion passed unanimously. (4-0)*

- C. Review and possible approval of Great Basin Engineering Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to approve the Great Basin Engineering warrants.**

*The motion passed. (3-0 Councilman Schmidlein abstained.)*

## **VII. REPORTS**

- A. Mayor and City Council

*Councilman Schmidlein said a few words about Mayor Johnson and Councilman Rice and working with them for the last six years and wished them luck in the future.*

*Councilwoman Simons mirrored Councilman Schmidlein’s comments and wished everyone a Merry Christmas.*

- E. Public Works

*Dennis Strickland followed the sentiments expressed by Councilman Schmidlein and Councilwoman Simons. They have done a great job and they will be missed.*

## **VI. 5:30 P.M. PUBLIC HEARINGS**

- A. First reading for Ordinance 837, an Amendment to Title 4, Chapter 9 of the Elko City Code entitled “Prostitution,” and matters related thereto.” **FOR POSSIBLE ACTION**

Council initiated Staff to make changes to City Code Title 4, Chapter 9, “Prostitution,” as well as to complete a business impact statement on October 23, 2018. On December 11, 2018 council determined there was a direct and significant impact to businesses due to the proposed rule fee structure (pursuant to NRS 237.080). Furthermore, council approved the business impact statement subject to the proposed fee structure being changed to \$5000 per applicant for the application, \$6500 for a new license, and \$6500 for an annual renewal of the brothel license. Today is the first reading of the ordinance. If council approves first reading, the next meeting will include the second reading of the ordinance as well as the resolution outlining the revised fee structure. BR

Chief Reed went over the highlights of the proposed Ordinance.

Louis Goldberg, 103 3<sup>rd</sup> Street, said a lot of work has been put into this and he appreciates the hard work. He doesn't have any real issues but he wanted some clarity. On 4-9-7(C) where they were talking about taking out the 30 days, shouldn't we put some length of time in there?

Councilman Schmidlein asked if the Chief was willing to put 60 or 90 days in there.

Chief Reed said they originally had 60 days in there but thought 90 days was appropriate.

Mr. Goldberg went to 4-9-12(B) regarding the timing of payment. Sometimes there are holidays that land on the due days. Just recently they turned in some paperwork and could not pay until the Chief signed off.

Councilman Schmidlein asked if he was looking for a grace period or maybe the next business day.

Councilman Rice said in those cases it rolls up to the next business day anyway. He didn't think anything needed to be changed.

Councilwoman Simons asked about the circumstance Mr. Goldberg was talking about and if this would cover it.

Chief Reed said he wouldn't have a problem with it. The current ordinance says the 15<sup>th</sup> so nothing has changed.

Kelly Wooldridge, City Clerk, said there was some issue and she agrees with the next business day.

Mr. Goldberg went to 4-9-14(A). They get calls from the state about a girl testing positive. When they call the Police Department, sometimes they get different information. He wanted some clarification about how to get information and/or testing results.

Councilman Rice thought that fell under HIPAA law.

Dave Stanton, City Attorney, said the sex worker could sign a waiver for the house to receive information but the City would not be able to give them information otherwise.

Shelby Womack explained the current process for sex workers and how they get their test results.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to approve Ordinance No. 837 with one revision to 4-9-7(C), Report of an investigation within 90 days, the Police shall report the result, initiate the business impact statement process and refer the matter for second reading.**

*The motion passed unanimously. (4-0)*

- B. Review, consideration, and possible action to adopt Resolution No. 30-18, a resolution of the Elko City Council adopting a change in zoning district boundaries from C- General Commercial and GI- General Industrial to R-Single

Family and Multiple Family Residential approximately .287 acres of property located generally north of the intersection of 9<sup>th</sup> Street and River Street, filed by Donald Carlson and Valvet Carlson, and processed as Rezone No. 7-18, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the subject zone change request on December 4, 2018 and took action to forward a recommendation to City Council to adopt a resolution which conditionally approves Rezone No. 7-18. CL

Cathy Laughlin, City Planner, explained the zone change request.

**\*\* A motion was made by Mayor Johnson, seconded by Councilman Rice, to adopt Resolution No. 30-18. .**

*The motion passed unanimously. (4-0)*

## **VII. REPORTS (Cont.)**

### **A. Mayor and City Council**

*Councilman Rice made a heartfelt farewell speech.*

*Mayor Johnson also gave a heartfelt speech thanking City staff and constituents for the last fifteen years filled with experiences he will treasure.*

### **B. City Manager**

*Curtis Calder stated he has worked with two Mayors and at least nine Councilmembers, five Police Chiefs, three Fire Chiefs, three City Clerks and two City Attorneys. Without a doubt this has been the best Council to work for. He has enjoyed working with them. He wished them the best and hope they stay involved. Elko is a great place to live and the best place to live in the state.*

### **C. Assistant City Manager**

### **D. Utilities Director**

*Ryan Limberg said it has been rewarding working with Mayor Johnson and Councilman Rice. He has valued their opinions. He commends them for finding a way to work together to get things done. He thanked them for their dedicated service. He thought they left the City better than they received it.*

### **F. Airport Manager**

*Jim Foster reported next month will be his 19<sup>th</sup> year with the City but this is the only board he has worked with. Thank you for your leadership and support. Thursday will be the final walkthrough for the two projects at the airport.*

### **G. City Attorney**

*Dave Stanton said Councilman Rice and Mayor Johnson have been very thoughtful; they listened and cared. They have always wanted to do the right thing. It made his job easier and he appreciates having the privilege of working with both of them.*

### **H. Fire Chief**

*John Holmes congratulated Mayor Johnson and Councilman Rice. Then he stated this is the 5<sup>th</sup> year with Operation Santa. They have five families they are sponsoring this year. It has been very successful.*

*Jack Snyder said thank you to Mayor Johnson and Councilman Rice. Thanks to their support and help, the Fire Department has come a long way. He went on to report ISO was there last week to do their annual audit. We have gotten stronger and he believes they will be improving their score. It will get even better once the Next Gen E911 comes online.*

I. Police Chief

*Chief Reed echoed the comments that staff made regarding Mayor Johnson and Councilman Rice. It has been great having their support. They will be missed. He gave an update on Next Gen E911.*

J. City Clerk

K. City Planner

L. Development Manager

M. Administrative Services Director

N. Parks and Recreation Director

*James Wiley echoed everything that was said to Mayor Johnson and Councilman Rice. He reported on the Swimming Pool inspection and report. Mike Lostra will be making preliminary estimates and it will be evaluated before we move to the next step.*

O. Civil Engineer

*Bob Thibault has enjoyed working with Councilman Rice and Mayor Johnson. He reported on the Sports Complex project.*

P. Building Official

*Jeff Ford said best wishes and it has been great working with them.*

## 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.*

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

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Mayor Chris Johnson

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Kelly Wooldridge, City Clerk