

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

SS June 9, 2009

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, June 9, 2009.

This meeting was called to order by Mayor Michael J. Franzoia

ROLL CALL

Mayor Present: Michael J. Franzoia

Council Present: Councilman Jim Conner
Councilman Jay Elquist
Councilman Chris Johnson
Councilman John Rice

City Staff Present: Delmo Andreozzi, Assistant City Manager
Shanell Owen, City Clerk
Alan Kightlinger, Fire Chief
Don Zumwalt, Police Chief
Dawn Stout, Administrative Services Director
Eric Howes, Parks & Recreation Director
Ryan Limberg, Utilities Director
Dennis Strickland, Public Works Director
Trent Moyer, Airport Director
Fritz Sawyer, WRF Superintendent
Antonio Mendive, Water/Sewer Superintendent
Scott Wilkinson, Development Manager
Ted Schnoor, Building Official
Ed Wynes, City Planner
Lorraine Martinez, Accounting Supervisor
Linda Buffington, Recording Secretary

PLEDGE OF ALLEGIANCE

I. PERSONNEL

A. Employee Introduction: Matt Helmke – Parks Laborer

II. APPROPRIATIONS

B. Brief presentation and possible acceptance of a renewal proposal from Nevada Public Agency Insurance Pool (POOL) and approval of invoice for payment from FY 2009/2010 funds, and matters related thereto. **ACTION ITEM**

As a member of the Insurance Pool, the City of Elko owns a share of the equity that forms the basis for its financial strength.

Your agenda packet includes an overview of coverage offered for the following fiscal year. The City of Elko's total program costs for FY 2009/2010 are \$493,430.63, representing an approximate 8% increase when compared to the current fiscal year. CC

Russ McMullen was present to answer questions.

**** A motion was made by Councilman Rice, seconded by Councilman Johnson to accept the renewal proposal from Nevada Public Agency Insurance Pool (POOL) and approve a payment of \$493,430.63 from FY 2009/2010 funds.**

Motion passed unanimously.

- C. Review, consideration, and possible approval to solicit bids for the installation of a 24" water line connecting new Well 43 to the existing distribution system, and matters related thereto. **ACTION ITEM**

This project is budgeted as part of the FY 2009/2010 Capital Budget. Staff is requesting to solicit bids at this time with award of the bid being made after July 1, 2009. RL

Utilities Director Limberg indicated this was a straight-forward project consisting of 2,500' of pipe; Staff has budgeted \$500,000.

**** A motion was made by Councilman Conner, seconded by Councilman Johnson authorizing Staff to solicit bids for the installation of a 24" water line connecting new Well 43 to the existing distribution system.**

Motion passed unanimously.

- D. Discussion and possible authorization for Staff to solicit bids for construction of the Effluent Emergency Storage Pond Project, and matters related to thereto. **ACTION ITEM**

The WRF agreed to install an approximate 1.5 million gallon HDPE plastic lined pond to capture any effluent spills from the plant. The pond would capture and return spilled effluent to the plant eliminating permit discharge violations.

The agreement to build the pond is part of the 2005 NDEP "Show Cause" Implementation Plan (Order No. NV083004W1). NDEP has already approved the engineering design. This capital project was approved in 2009/2010 budget for \$345,000. FPS

WRF Superintendent Sawyer advised we had a number of spills that became reportable to the State; as a result we entered into an agreement with NDEP to line that area so we can capture the minor spills and pump them back in and eliminate the permit violations. Staff is ready to go to

bid; the plans have been approved by NDEP. Staff will come back before the Council at the July 14th meeting for project approval. We have a sixty-day window for this project; beginning in September and finishing up in October.

Mayor Franzoia questioned upon completion of this project would the other ponds be covered up.

Mr. Sawyer stated they would be used for backup in the event we had to shut the plant down for a number of days.

**** A motion was made by Councilman Elquist, seconded by Councilman Johnson authorizing Staff to solicit bids for construction of the Effluent Emergency Storage Pond Project.**

Motion passed unanimously.

- E. Review consideration and possible authorization for the Public Works Department to solicit bids for the College Parkway Capital Construction Project, and matters related thereto. **ACTION ITEM**

This project was approved with the adoption of the Street Inventory and work program for 2009-2010. DS

Public Works Director Strickland noted this is the first of three projects Staff will be considering for bid. Chilton Engineering has the design completed for this work. Concrete work is estimated at \$85,000; the asphalt patch-back will be completed by the Street Department.

**** A motion was made by Councilman Elquist, seconded by Councilman Rice authorizing Staff to solicit bids for College Parkway Capital Construction Project.**

Motion passed unanimously.

- F. Review, consideration, and possible authorization for Staff to solicit bids for the Public Works Department Slurry Seal Project 2009, and matters related thereto. **ACTION ITEM**

Slurry Seal is a preventative maintenance treatment, which will be applied to approximately 5 miles of selected city streets that were identified and adopted as part of the City of Elko Street Inventory. DS

Public Works Director Strickland advised this our annual preventive maintenance program. This year we will cross 5th Street and get into the last segment of the tree streets.

Mayor Franzoia questioned if 5 miles each year is consistent.

Mr. Strickland indicated last year was closer to 12 miles. This will get us within two years of starting to begin our rotation to re-treat several streets.

Councilman Rice questioned if the two years was within Staff's time-line to re-treat.

Mr. Strickland verified the goal was to re-treat every two or three years.

**** A motion was made by Councilman Conner, seconded by Councilman Rice authorizing Staff to solicit bids for the Public Works Department Slurry Seal Project 2009.**

Motion passed unanimously.

III. NEW BUSINESS

- A. Review and approval of pending Special Events, and other matters related thereto.
ACTION ITEM

This item has been added to the agenda in order to consider any application for Special Events received by the Clerks Office. Staff will report on any application on file. SO

There were no special events.

- B. Review and possible approval of a request from the Elko Motorcycle Jamboree Committee to accommodate a carnival on City owned property and approval for overnight camping associated with the carnival, and matters related thereto.
ACTION ITEM

The Elko Motorcycle Jamboree Committee is requesting permission to use City owned property for a carnival to be held in conjunction with the Motorcycle Jamboree Event from June 18th through 21st, 2009. The request includes permission for overnight camping. The Elko Motorcycle Jamboree Committee is requesting the use of City owned property located near the Elko Dispatch Center. SO

Mayor Franzoia indicated the Motorcycle Jamboree requested this matter be withdrawn from the agenda.

- C. Review, consideration, and possible approval of the Nevada State Firefighters Memorial Parade (NSFA) to be held on Saturday, June 27, 2009 from 7:15 a.m. to 8:00 a.m., and matters related thereto. **ACTION ITEM**

This is a new parade sponsored by the Elko City Volunteer Fire Department. The parade route begins at Fire Station #2 (723 Railroad Street) and will turn north on 8th Street, travel to Idaho Street, turn east on Idaho Street, and travel to College Avenue where the parade will turn north on College Avenue, and end at the Convention Center. DH

Jim Foster, Elko Volunteer Fire Department advised they are this year's hosts for the 74th Annual Nevada State Fire Fighters Association Training Conference. One of the requirements of that is to have a memorial parade.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist approving the Nevada State Firefighters Memorial Parade (NSFA) to be held on Saturday, June 27, 2009 from 7:15 a.m. to 8:00 a.m.**

Motion passed unanimously.

IV. RESOLUTIONS AND ORDINANCES

- A. Review and approval of the Elko City Election held June 2, 2009, and its results, including the adoption of Resolution #11-09, and matters related thereto.
ACTION ITEM

Pursuant to Nevada Revised Statutes 293C.387, the election returns from a general city election must be filed with the City Clerk. No person may handle, inspect or in any manner interfere with the returns until they are canvassed by the Mayor and the governing body of the City. The canvass must be completed on or before the fifth working day following the election. After the canvass is completed, the governing body of the City and Mayor shall declare the result of the canvass. SO

Ms. Owen read the election results into the record.

Precinct One:

Jim Conner - 7, Jay Elquist – 13, Vern Koncher – 12

Total ballots cast: 17

Precinct Two:

Jim Conner - 11, Jay Elquist – 13, Vern Koncher – 9

Total ballots cast: 21

Precinct Three:

Jim Conner - 38, Jay Elquist – 33, Vern Koncher – 31

Total ballots cast: 57

Precinct Four:

Jim Conner - 23, Jay Elquist – 17, Vern Koncher – 16

Total ballots cast: 32

Precinct Five:

Jim Conner - 41, Jay Elquist – 35, Vern Koncher – 20

Total ballots cast: 56

Precinct Six:

Jim Conner - 10, Jay Elquist – 16, Vern Koncher – 8

Total ballots cast: 20

Precinct Seven:

Jim Conner - 25, Jay Elquist – 18, Vern Koncher – 19

Total ballots cast: 35

Precinct Eight:

Jim Conner - 36, Jay Elquist – 36, Vern Koncher – 12

Total ballots cast: 45

Precinct Nine:

Jim Conner - 28, Jay Elquist – 17, Vern Koncher – 10

Total ballots cast: 31

Precinct Ten:

Jim Conner - 49, Jay Elquist – 41, Vern Koncher – 29

Total ballots cast: 69

Precinct Eleven:

Jim Conner - 15, Jay Elquist – 13, Vern Koncher – 21

Total ballots cast: 28

Precinct Fourteen:

Jim Conner - 27, Jay Elquist – 23, Vern Koncher – 14

Total ballots cast: 37

Early Voting:

Jim Conner – 250, Jay Elquist – 215, Vern Koncher – 116

Total Early Ballots Cast: 319

Absentee Voting:

Jim Conner – 115, Jay Elquist – 100, Vern Koncher – 71

Total Absentee Ballots Cast: 170

Grand Total:

Jim Conner – 675, Jay Elquist – 590, Vern Koncher – 388

Total ballots cast: 937

City Clerk Owen stated the election process ran very smoothly; there were no clerical errors and the results are as submitted.

**** The motion was made by Councilman Rice, seconded by Councilman Johnson to approve the Elko City Election held June 2, 2009, and its results, including the adoption of Resolution #11-09.**

Motion passed unanimously.

V. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible approval of an appeal from Todd Shouse of Team Green regarding Staff's position of approval for partial payment only of an invoice for work completed at 1982 Ruby View Drive, and matters related thereto. **ACTION ITEM**

City Staff's position on this matter is that they did not authorize work to the extent it was carried out. Team Green feels City staff did authorize the work to the extent it was carried out. Staff is willing to pay for the portion of work they feel was authorized. Team Green feels the full invoice should be paid. As such, I am requesting City Council consider this matter and provide direction to Staff regarding the payment amount for the invoice under dispute. RL

Water/Sewer Superintendent Mendive explained the issue in further detail for the Council's benefit. Staff believed the plan was for Team Green to dig up the area in front of the meter pit and stop; we would move forward once we identified the problem; evidently Team Green understood differently.

Utilities Director Limberg indicated representatives from Team Green were present; Todd Shouse and Kevin Williams.

Todd Shouse, Team Green advised Mr. Williams spoke with Mr. Mendive numerous times during the entire process and was told repeatedly to "make it work"; that is what they did. During the process they were in contact with Mr. Mendive and advised him of what they were going to do. This project started last fall and was postponed during the winter months; Mr. Mendive was informed as to what the next step would be. Team Green installed the mainline and the system still did not work, they installed sprinkler heads that worked on low pressure and lower volumes and had the system working. After a short period of time the owner stated the sprinklers were not working; Mr. Mendive was again contacted and it was then discovered the problem was in the meter loop the entire time. Mr. Shouse stated his belief Team Green did what they told Mr. Mendive they were going to do.

Mayor Franzoia requested clarification on the meter loop.

Mr. Mendive advised it was in the pit; there was no meter in there.

Mr. Mendive apologized but did not remember the numerous conversations Mr. Shouse referred to; he did recall the conversation earlier this year when he requested they dig in front of the meter pit; prior to that time the issue was being dealt with by another staff member. Staff had reason to believe pipes were kinked which is why the decision was made to dig in front of the pit. Staff did not believe it was the City's problem because the report from the owner was that the water in the house was working fine; the sprinklers were not working. After everything had been dug out the homeowner indicated they were having water problems in the house.

Councilman Elquist requested clarification the block was on the City side.

Mr. Mendive verified the block was; it consisted of rock in the pipe elbow.

Councilman Elquist questioned what Staff would have done different.

Mr. Mendive advised Staff tested the meter pit in the fall when they received a complaint; we had good water flow then. Staff would have investigated the immediate area where they were working and tested the flow one more time.

Mr. Williams indicated they tested the flow and found there were still problems; there was pressure but no flow. At that point they went back to City Staff and advised Team Green had done everything possible so the problem had to be prior to any of their work.

Councilman Elquist requested clarification on the additional work; was the work done for Team Green with the belief it was their problem.

Mr. Shouse stated Team Green was authorized by the City through the entire process; we were told to make it work and that's what we did. Once everything was working it quit again; evidently the rock shifted in the meter pit and that is when City Staff came and checked things out. Mr. Shouse again stated they did what they were authorized to do.

Mayor Franzoia noted this was the first time something like this has come before the Council.

Councilman Rice questioned whether Team Green has done this type of contract work for the City in the past.

Mr. Shouse stated they had not.

Mayor Franzoia stated we need to be more careful as the City grows; the unclear will get us into trouble. When ever we contact an outside entity to do specific work for the City there needs to be something in writing.

Mayor Franzoia believed in this situation the City made a mistake in not giving guidance or oversight.

Mr. Shouse stated Team Green accepts a share of the responsibility for not having something in writing.

Councilman Rice questioned if there was something in place that defines the City's responsibilities up to the meter and the homeowner's responsibility from the other side.

Utilities Director Limberg advised City Code Section states the City's responsibility will go to the property line but in no way will go inside the property line; the property line is the divider.

Mayor Franzoia questioned what happens in a situation such as this; it was a failure of the City's pipe and rocks got into the system and damaged the property.

Mr. Limberg noted it is a difficult issue. There was a problem with rocks in the line; whose fault is that isn't the issue; work was performed and what City authorized City needs to pay for. The distinction lies in the fact Staff feels work was not authorized to the extent it was completed.

Mayor Franzoia stated lack of clarity is the problem.

Councilman Rice questioned whether a written work order was presented to Team Green.

Mr. Mendive indicated there were work orders and correspondence from them but during this particular time there was not.

Mr. Limberg believed Staff does a good job of following the City purchasing policy i.e. quotes etc. but we also have the provision for emergency repairs and this instance would have been considered that type of work.

Assistant City Manager Andreozzi noted based on the testimonies it appears there was a misunderstanding between what we said our intentions were and what was perceived; perhaps we can discuss some form of compromise and sharing in the responsibility.

Mr. Limberg advised Staff has made the effort to meet in the middle; apparently Mr. Shouse felt differently because we received the invoice back again.

Mr. Shouse indicated the invoice did not include the man hours he spent on the project and therefore believed he had in fact discounted his expenses.

Councilman Rice commended Mr. Shouse but advised there is no record of any type of discount. Team Green has stated they accept some responsibility for not having something in writing. Is there a chance everyone can go back to the table and attempt to resolve this matter? Mr. Rice believed it would be reasonable for a vendor to think the City would not replace an entire sprinkler system for a homeowner; as appears to be what happened in this instance; especially without some type of written authorization.

Mr. Shouse stated he was willing to negotiate.

Councilman Conner questioned the cost difference between what Mr. Shouse believed the City owes and what they are willing to pay.

Mr. Limberg believed splitting the invoice somewhere in the middle was fair; with both parties taking some responsibility. It didn't seem reasonable in Staff's review to pay for hose clamps, elbows, poly pipe, couplers, sprinkler heads and nozzles as well as double-check valves. Staff believes strongly the authorized excavating around the meter pit but that was where their authorization stopped; we don't have that in writing as is typical. Mr. Limberg advised he and Mr. Mendive spoke with Staff and were unable to get a confirmation from anyone that they authorized Team Green to replace sprinkler heads; neither he nor Mr. Mendive gave that authorization either. For those reasons Mr. Limberg stated it was unreasonable to pay for those parts; he is willing to work with Team Green to find an agreeable number but to date all negotiations have been unsuccessful; the effort needs to be made on Team Green's part to come back and meet with Staff. Mr. Limberg indicated he has made that offer several times and placed numerous calls to Mr. Shouse with no response and numerous emails with no response until he requested a "return receipt". Staff has been trying to work it out and is asking for the same effort on the other side.

Mayor Franzoia advised our policy isn't good and this is going to happen again; we need to be more professional in these types of matters.

Councilman Rice expressed support of paying \$2,425.50; but the installation of the sprinkler system falls out of what the City would typically do.

Mr. Shouse stated he did not want to burn any bridges and was willing to negotiate the matter.

In an effort to resolve the issue at tonight's meeting Mayor Franzoia advised Council would postpone this item for a short period thereby allowing Staff and Team Green time to negotiate further.

Councilman Elquist believed a contractor frequently used by the City would know the work methods and where our demarcation point is. This was a first time contractor and it looks like they made a good effort to try and fix the problem; it appears they didn't know the demarcation points or does and don'ts; that was the City's responsibility to explain. It seems there was no bad intention here they were just trying to do the right thing and it's a bit on the City; especially for a first time contractor. We want good relationships with contractors, especially in emergency situations.

City Staff and members of Team Green left the meeting to resume negotiations.

I. PERSONNEL

- B. Review and possible approval of an Agreement Regarding Retirement and Release of all Claims between Bruce A. Hett, the Elko Police Officers Protective Association, IUPA – AFL/CIO Local 233, and the City of Elko, and matters related thereto. **ACTION ITEM**

A copy of the above referenced agreement has been enclosed in the agenda packet for review. A representative from the City Attorney's office will be present to answer any questions that may arise. CC

Mayor Franzoia noted a letter of protest was received from Richard Sandoz; see Exhibit 'A'.

Police Chief Zumwalt advised this was one of several options for the City and Police Department. In his opinion this is the best option and encouraged the Council to approve the agreement; it is a problem solving venture, we can solve the problem and move forward.

Mayor Franzoia referred to the letter of protest and clarified a few points 1) the City is not in a lawsuit and 2) the insurance option was a one-time opportunity in September of 2008 and is therefore not under consideration for this matter.

Attorney Tom Coyle advised the Council of cautionary items outlined in City Code 1-8-12 which provides confidentiality for specified types of information and performance information, disciplinary actions, investigative files. Mr. Coyle stated he wanted to bring that to the Council's attention before they begin discussing the matter. In addition, under the Open Meeting Law 241

we would be prohibited from discussing alleged misconduct, character or competence of any individuals.

Mr. Coyle summarized the agreement and noted it does resolve some dated personnel issues with Sergeant Bruce Hett that began before the present Police Chief's administration. Mr. Coyle stated that in considering the options Chief Zumwalt alluded to; his office as well as another legal office and City Staff recommend adoption of this agreement to resolve this manner. There is basically five terms in the agreement 1) provides for the retirement of Sergeant Hett on September 1, 2009 2) without any admissions of any kind, it provides mutual releases between the City and Sergeant Hett concerning any existing or potential claims 3) without any admissions of any kind, it provides for withdrawal of pending disciplinary actions and harassment complaints 4) it provides that Sergeant Hett will not seek future employment with the City and 5) provides the standard payout to someone leaving City employment i.e. their final paycheck, their vacation benefits, sick leave benefits and the referenced three-year purchase of service credits with PERS.

Mr. Coyle indicated it was a cost saving measure; weighing the risks etc. and is present to request the Council adopt the agreement.

Mayor Franzoia clarified for Chief Zumwalt the monies would come from his budget.

Chief Zumwalt verified his understanding the money would come from the department operating budget; we will not fill any available positions until we are financially balanced.

**** A motion was made by Councilman Rice, seconded by Councilman Johnson to approve an Agreement Regarding Retirement and Release of all Claims between Bruce A. Hett, the Elko Police Officers Protective Association, IUPA – AFL/CIO Local 233, and the City of Elko.**

Motion passed unanimously.

II. APPROPRIATIONS

A. Review and possible approval of Warrants. ACTION ITEM

**** A motion was made by Councilman Conner, seconded by Councilman Rice to approve the warrants as submitted.**

Motion passed unanimously.

V. PETITIONS, APPEALS, AND COMMUNICATIONS

A. Review, consideration, and possible approval of an appeal from Todd Shouse of Team Green regarding Staff's position of approval for partial payment only of an invoice for work completed at 1982 Ruby View Drive, and matters related thereto. **ACTION ITEM**

Discussion now resumed on this item.

Utilities Director Limberg stated the City requested Team Green to do the work therefore the City does have some liability in this invoice. There is a lack of written direction that was not provided which was a factor in the lack of clear scope for the work. Team Green made a good effort to fix the problem and that problem was in fact on the City side. As a result of this Staff will have a written scope of work for emergency work prior to authorization of that work. Based on those factors it appears the best solution for all would be to recommend payment of the \$2,400 for the labor and \$1,000 due to the lack of written direction or clarity where exactly to stop the work at for a total of \$3,400 which would extend the City total up about \$1,000 and reduce Team Green down a bit over \$1,000; all sales tax would be removed.

Mayor Franzoia questioned if both sides were in agreement.

Mr. Shouse stated they were.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to approve payment of Invoice # 7335 from Team Green in the amount of \$3,400.**

Motion passed unanimously.

VII. REPORTS

- A. Police Chief – S.W.A.T. Team arrest update
- B. Administrative Services Director – Sales Tax trend
- C. Parks and Recreation Director – Mosquito spray application weather dependent

5:22 p.m. Mayor Franzoia called for a brief recess.

VI. 6:00 P.M. PUBLIC HEARINGS

- A. Public comment period. **ACTION WILL NOT BE TAKEN**

This agenda item is to provide time for the general public to address the City Council regarding items of concern. Action cannot be taken at this time, but a matter can be set on the agenda for a future meeting, as appropriate.

There was no public comment.

ADJOURNMENT

There being no further business, Mayor Michael J. Franzoia adjourned the meeting.

Mayor Michael J. Franzoia

Shanell Owen, City Clerk