

**MINUTES
CITY OF FALLON
55 West Williams Avenue
Fallon, Nevada
May 18, 2020**

The Honorable City Council met in a regularly scheduled Council meeting on the above date in the Council Chambers, 55 West Williams Avenue, Fallon, Nevada.

Present:

Mayor Ken Tedford
City Councilman, James D. Richardson
City Councilwoman, Kelly Frost
City Councilwoman, Karla Kent
Legal & Administrative Director, Robert Erquiaga
Police Chief, Kevin Gehman
Deputy City Attorney, Trent deBraga

The meeting was called to order by Mayor Tedford at 9:00 a.m.

Mayor Tedford led the Pledge of Allegiance.

Mayor Tedford inquired if the agenda had been posted in compliance with NRS requirements.

Legal and Administrative Director Erquiaga advised that the agenda was posted in compliance with Governor Sisolak's Declaration of Emergency Directive 006, and as extended by Directives 016 and 018, the agenda and the supporting materials were posted on the City's website and the State of Nevada's public notice website on or before 9:00 a.m. on May 13, 2020.

Public Comments

Mayor Tedford inquired if there were any public comments. He noted that comments are to be general in nature, not relative to any agenda items. No action may be taken on a matter raised under this item until the matter has been specifically included on an agenda as an item upon which action will be taken.

No public comments were noted.

Approval of Council meeting minutes for April 20, 2020

Mayor Tedford inquired if there were any additions or corrections to the minutes for April 20, 2020.

No additions or corrections were noted.

Councilwoman Frost motioned to approve the Council meeting minutes for April 20, 2020 as submitted, seconded by Councilman Richardson and approved with a 3-0 vote by the Council.

Approval of Warrants

- A) Accounts Payable
- B) Payroll
- C) Customer Deposit

Mayor Tedford inquired if there were any comments regarding the accounts payable, payroll and customer deposit warrants.

No comments were noted.

Councilwoman Kent motioned to approve the accounts payable, payroll and customer deposit warrants and authorize the Mayor to sign the same; seconded by Councilwoman Frost and approved with a 3-0 vote by the Council.

Nevada Census 2020 update by Regional Coordinator Garrett R. Kalt

Mayor Tedford explained that Mr. Kalt was unable to attend this meeting so this agenda item would be withdrawn. He added that the census was going well. He believed that we were in second place in the total response rate for cities in Nevada. We are less than 1% behind Henderson so we need to get the word out because he challenged the Mayor of Henderson to a friendly competition, so we need to be first. Fallon is doing well in census response and we hope to do even better. This spurred some other friendly competitions; Fernley has now challenged Mesquite. The census response just takes a few minutes, so it is easy to do to help our City.

Possible introduction of Bill No. 783: An ordinance adding a new Chapter to Title 9, Subtitle II – Offenses Against the Person, of the City of Fallon Municipal Code in order to establish a City misdemeanor offense of “Battery Which Constitutes Domestic Violence,” along with corresponding penalties, and for other matters properly related thereto. (This agenda item is for possible introduction of the proposed ordinance only. If introduced, a public hearing on the proposed ordinance will be set for June 1, 2020 at 9:00 a.m. and no further action can or will be taken at this meeting. At the public hearing, which will be properly noticed and advertised in the Lahontan Valley News, the City Council will take comment and then consider possible adoption of the ordinance as introduced or amended.)

Legal and Administrative Director Erquiaga explained that we are asking a member of the Council to consider introducing Bill No. 783. If introduced and ultimately passed, it would create a separate and local offense of domestic battery. This would provide Deputy City Attorney Trent deBraga, Deputy City Attorney Leonard Mackedon, and himself, an important additional tool in Municipal Code to properly analyze and handle domestic battery cases that we see. As the Council knows, Municipal Court oversees misdemeanors that occur within the City and we typically run into either first or second offense misdemeanor domestic batteries. We spent quite a bit of time discussing this issue and how best to proceed with misdemeanor domestic battery prosecutions in light of the Nevada Supreme Court’s decision where they declared a domestic battery, even a misdemeanor, as a serious offense, which entitles somebody to a jury trial if they are charged with the offense. This additional tool will provide us the ability to really evaluate cases that could fall

into a couple of different categories wherein if charged with the local offense, we would be able to proceed with a trial just by Judge which was our typical practice in Municipal Court. It has become more apparent that we need this additional offense, or this additional tool, considering our current circumstances. It is hard to foresee when we would be able to call a jury pool and bring them into a courtroom. Every court in America is struggling with that right now. In discussing this with Deputy City Attorney deBraga, there are a series of domestic battery cases that are getting stacked up on the docket that really have no hope of getting resolved anytime soon. As we talked about that being six months or a year out, we do not believe that justice delayed to that extent is a positive or gives us the ability to properly intervene in the appropriate circumstances. Ultimately, if this ordinance is passed, this will give us the ability to proceed to charge cases under our Municipal Code versus the State Statute and we do believe that in the right circumstances there are cases that would be the right fit for the Municipal Code and we would be able to get those adjudicated in a more timely manner than those waiting for jury trials. This would not take away our ability to have a jury trial and we do not intend for it to be that. Right from the start, when we discussed this and the Supreme Court's decision with Mayor Tedford we intended to carry out our duty that the Supreme Court laid on us to have jury trials and we still intend to do that in the right circumstances and when it is safe to do so. In the interim, this gives us that other opportunity. As Mayor Tedford mentioned, this was just for introduction. If it does get introduced, we will have a public hearing and the ability to discuss it further as well as to take public comment at that time. Both he and Deputy City Attorney deBraga were available to take any questions about the proposed ordinance.

Mayor Tedford inquired if the Council had any comments or questions.

Councilwoman Kent confirmed that it is the prosecuting attorney that determines what level the person would be charged with.

Legal and Administrative Director Erquiaga explained that it really could be both. The arresting officer and the Police Department would have the initial review, so if they were to respond to an alleged domestic battery they would have a choice, if this was available, to either charge under the Municipal Code or the State Statute. But ultimately, the decision on what charge would proceed in court would be up to the prosecuting attorney.

Councilwoman Kent asked Chief Gehman what his feelings on this proposed ordinance were.

Chief Gehman stated that under current circumstances it was probably appropriate. It gives more options for a prosecution to get handled quicker than maybe sitting on a docket until we have time to do a jury trial. He thought Legal and Administrative Director Erquiaga was right on with his analysis of being able to mete out justice when someone gets charged with domestic violence that we can bring that to a fruition and introduce whatever services or incarceration if that is required. He believed this would give us an additional option that we would not otherwise have for quite some time.

Councilman Richardson commented on the arresting officer on the scene. In his opinion, he did not think the decision on what to charge should be made at that time. Ultimately, it should be the prosecuting City Attorney because the officer on the scene would only have so much information and to make a determination what route that this charge would be at that time was premature.

Legal and Administrative Director Erquiaga agreed, if the officer on the scene makes an arrest, which State law requires under certain circumstances, they have to make an election at that point of which charge to list it under, so this would give them the ability to cite either under the

Municipal Code or State Statute. We took the extra step in the ordinance – it is probably redundant or overkill – but the ordinance does contain a provision that if you get arrested under the Municipal Code that you are not to be admitted to bail prior to 12 hours. There is a State Statute that covers that and it would apply if the Council adopted the ordinance but we thought that it was important; the point being, no matter which option the officer selects in the field, the initial proceedings would be no different, and then by the time it gets to the prosecutor’s office, he or Deputy City Attorney deBraga would certainly be the ultimate decider on which we would proceed with. So, no matter what the officer arrested them under, and that would be true for really any offense, we would still have the ability to either amend or dismiss or change the charge, as necessary. Domestic battery is a little more complicated because the law requires officers in the field to arrest people if certain circumstances are met. It also requires us as prosecutors to move forward if certain circumstances are met. So, our hands are more tied in these offenses than others, but in any event, it is ultimately going to be the prosecutor’s decision.

Councilman Richardson thanked Legal and Administrative Director Erquiaga, he wanted to make that clear and put it on record that it would be a thorough vetting process. He added that the ordinance covers that and explains it very well. It is a little bit of overkill, but we want to make sure we have all the options and we are meeting all the requirements.

Legal and Administrative Director Erquiaga concurred, adding that we certainly did not want to provide any loopholes where somebody might be able to be admitted to bail sooner just because Municipal Code was chosen versus the State Statute. We were concerned enough with that to put it into the ordinance and make that clear.

Mayor Tedford asked which other cities have put this tool in their toolbox.

Legal and Administrative Director Erquiaga stated that Las Vegas, North Las Vegas, and Henderson adopted this ordinance or one very similar to it. Their discussion was somewhat similar to ours today. Theirs were a bit more reactionary, not in a negative way, they were looking at dockets that had hundreds if not thousands of domestic batteries pending and to find out that Municipal Courts had to hold jury trials when their facilities were not equipped, they had never done it before, and it is not just a matter of flipping a switch. The day the Supreme Court decision was issued, Deputy City Attorney deBraga was at a prosecutor’s conference and he forwarded the information. Later that day, he, Mayor Tedford and Public Works Director Byrd, and Deputy Public Works Director Swirczek were in the Municipal Courtroom looking at it from a facility standpoint. Then you think about what it takes logistically to even impanel a jury, whether it be the systems that are involved, actually getting people to show up, and walking through that process. It was a lot, so he believed those cities were reacting a bit more to that portion of things. In the meantime, we have put in that effort, we have some designs underway where we could potentially make some improvements to better seat and serve a jury. We have worked with District Court; Judge Stockard and Sue Sevon have been really awesome to work with as far as the actual impaneling of a jury. We have assisted them with a bit of a software upgrade, and they are prepared to call jury panels for us. Of course, for them, deciding who lives in the City versus the County was a new aspect, so that required a software change and it will require some process that we will learn a bit more of when we actually have one go forward as to how we identify those people. There is a lot that goes into it and we are prepared to proceed when it is safe to do so. We are prepared to try trials by jury in the cases that it is appropriate. That is a testament to Mayor Tedford’s response and getting us prepared to do that. In not running from our duty, we felt we had an obligation to keep these cases and to do what was required and we still intend to do that.

Councilwoman Frost confirmed for the record that this ordinance would not preclude someone from being charged with a felony if it is a very serious domestic violence incident.

Legal and Administrative Director Erquiaga stated that was definitely correct. There are a couple of ways you could get charged with a felony as a domestic battery and this ordinance would not change any of those. If you ultimately get convicted of this offense as a Municipal Code violation it is also enhance-able. So, as you get perhaps a second, or a third, which becomes a felony – a third offense domestic battery – this ordinance would certainly qualify as a previous conviction for those purposes. We are not establishing a loophole as it relates to enhancement either. There are certain offenses, whether domestic battery by strangulation, if a weapon is threatened or used; those would become felonies right away and they would not even come through the Municipal Court and this does nothing to change that.

Mayor Tedford inquired if there were any public comments or questions.

No public comments were noted.

Councilman Richardson introduced Bill No. 783: An ordinance adding a new Chapter to Title 9, Subtitle II – Offenses Against the Person, of the City of Fallon Municipal Code in order to establish a City misdemeanor offense of “Battery Which Constitutes Domestic Violence,” along with corresponding penalties, and for other matters properly related thereto.

Presentation of the Police Department Report for April 2020

Chief Gehman presented the April monthly report. He added that the April incidents and activities were far lower as a result of the lockdown, with fewer personal interactions there were far fewer needs for police services.

- Travel, training, and community engagement events did not take place, as they were restricted.
- Our staff was still operating at a high level with the activities they did have, based on our citizen survey results.

Mayor Tedford inquired if the Council had any comments or questions.

No comments were noted.

Mayor Tedford asked that the pages of the submitted report be numbered. He asked Chief Gehman to refer to the page that contains the Crime Summary. He inquired as to what the light pink bar in the graph represented.

Chief Gehman explained that it represented domestic battery; there were 3 in March and 2 in April.

Mayor Tedford thought that number would rise with the Stay at Home order. He asked Chief Gehman to explain that.

Chief Gehman stated that he would have to go back and do an analysis, but he knew that after they receive these numbers, the patrol captain goes through them and double checks them, so he assumed they were accurate. Now all the calls they received that may have been seen through their pass on summaries, may not have risen to the level of domestic violence, it could have been a family dispute or something that would not have risen to that level.

Mayor Tedford still thought that would have increased with everybody staying home.

Chief Gehman stated that was their expectation as well. They have seen an increase in calls that would be more like home-based issues, if he could leave it at that and not get too descriptive. He added that he would be interested to see what May looks like. April may have been sort of a honeymoon stage where the lockdown did not feel that deep yet.

Mayor Tedford stated that he hoped they would not increase; these low numbers were encouraging. He also complimented the department on their rate of citations versus warnings. People do not seem to believe that; they think we give everyone citations every time. Going back many years to Chief Carr's time, he used to tell the low percentage of citations versus the high percentage of warnings and people would just not believe it. Mayor Tedford also reminded the Council that the Animal Shelter Report shows City and County animals and that is actually where they pick the animal up. Churchill County Commission Chairman Jim Regan, many years ago, after looking at the report asked if the animals were stamped "City" and "County," and it was determined that it was the jurisdiction where the animals were picked up. The Police Department assured us the animals were not stamped. Laughter from the Mayor.

Mayor Tedford thanked Chief Gehman for the report.

Public Comments

Mayor Tedford inquired if there were any public comments.
No public comments were noted.

Council and Staff Reports

Mayor Tedford inquired if there were any Council or staff reports.

Councilwoman Kent asked if the City would move into Phase 2 automatically after being in Phase 1 for 14 days; or are we required to return to the Governor, state our case, and be approved to move into Phase 2.

Mayor Tedford stated he would like Legal and Administrative Director Erquiaga to answer this and added that he thought it was whatever the Governor decides is Phase 2. If he were asked, we would go to Phase 2 right now, this minute, but it was not his call. The Governor seemed to indicate that he would reassess it in 14 days when he made his speech, but he said we are one State united in that same speech which meant something to his ears, that 17 counties had to be able to meet the three parameters of: having enough hospital beds for a surge, being able to perform contact tracing, and sufficient PPE in storage. We met all three of those things by 1:00 p.m. Friday, after that speech, which was about two weeks ago. Then we found out that it did not matter that we met it because Governor Sisolak gave a speech the night before saying we were one State united, 17 counties, which was a little frustrating for us because we thought once it was confirmed that we met those three things we would be allowed to open up. Then another parameter popped up, confirmed cases must remain in a downward trend. We know we will have more cases, as testing is increasing. COVID-19 testing is taking place at the Churchill County fairgrounds and it is voluntary and open to the public in a drive-through format. The City is helping them out there too. We are following all the rules we are supposed to be following so that we can show we are compliant.

Legal and Administrative Director Erquiaga added that the Governor will wait at least 14 days and look at all those factors. We have been paying as close attention as we can, even that phone call with the Local Empowerment Advisory Panel (LEAP) Committee last Friday afternoon that he and Mayor Tedford sat in on, at this time there is hesitation to provide a date or even describe what Phase 2 will look like until they are able to sit down with the experts.

Mayor Tedford noted that Governor Sisolak advised of the formation of the LEAP Committee and only talks to counties, not cities. The LEAP Committee consists of Eureka County

Commission Chairman J.J. Goicoechea, Clark County Commission Chairwoman Marilyn Kirkpatrick, Washoe County Commission Chairman Bob Lucey and State-appointed officials. They were to study how we could reopen and analyze the report Churchill County submitted confirming we met all the parameters set forth to begin Phase 1. If they accepted it, it would be forwarded to the Governor's Office for final approval. Churchill County did all that and it was accepted. All the other counties were to submit their reports so we could all move toward Phase 1 and open as one State. Then we learned the LEAP Committee must meet with the MAP Committee, which is the Governor's medical team, and assess every county. Clark and Washoe counties are the largest and have the highest numbers of cases; but we do not have that problem out here. Wesley Harper, the Executive Director of the Nevada League of Cities, has been trying to get a meeting with the Governor but has been unable to secure a meeting. He finally did get a LEAP conference call set up with Mayors, Sheriffs, and County Commissioners. The Police Chief was not invited, but we invited him. Law enforcement was not addressed at all during the conference call. The LEAP Committee gave a presentation of where they were at the time, but it was just throwing a bone to the cities.

Legal and Administrative Director Erquiaga added that there were not many specifics outlined during the call.


Mayor Tedford noted that we do not really know what is going on until the Governor gives a speech. We receive a printout of his remarks afterward and then we figure out what he said in the printout. The rumor mill is that casinos will open June 1, and we do not know to what degree they would reopen. We do not know if it would include restaurants, slot machines, or table games and how the distancing protocols would be implemented. We are hoping we can enter Phase 2 at the end of the month, but we do not know.

Executive Session

Mayor Tedford tabled the executive session, as it was not needed at this time.

Adjournment

There being no further business to come before the Council, Mayor Tedford adjourned the meeting at 9:52 a.m.

Attest: 
Sean C. Richardson, City Clerk-Treasurer



Mayor Ken Tedford