ALAMOSA CITY COUNCIL
Regular Meeting Agenda

Alamosa City Council Chambers
300 Hunt Avenue, Alamosa, CO
September 4, 2013

As a full service municipal government, our mission is to enhance the quality of life for our residents, visitors, and businesses. We strive to provide balanced business, employment, recreational, and residential opportunities.

Any person needing reasonable accommodation to attend or participate in a public meeting, please contact the Alamosa City Clerk's office by telephone (719) 589-2593, by email cityclerk@ci.alamosa.co.us, in person at 300 Hunt Avenue, or by mail at POB 419, Alamosa, CO 81101.

LINK TO COUNCIL CALENDAR

5:30 p.m. – Work Session, Interview HPAC applicant
6:00 p.m. – Work Session, Initial Budget Presentation
7:00 p.m. – Regular Meeting

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. AGENDA APPROVAL

IV. CITIZEN COMMENT

Alamosa City Council welcomes your comments. Citizens wishing to speak may obtain and complete a speaker card through the City Clerk at the start of the meeting.

A. Audience Comments
B. Follow-Up

VI. CONSENT CALENDAR A

The Consent Calendar allows multiple actions with one motion. Consent Calendar A contains routine items which have been recommended for action by staff or advisory boards. Council may remove a consent calendar item for separate consideration.

C. 7. a. Approve Minutes of Regular Meeting August 21, 2013
C. 7. C. Approve Minutes of Special Meeting August 26, 2013

VII. REGULAR BUSINESS

A. Presentations from Outside Agencies

1. SBDC Update, Donna Wehe

C. Business Brought Forward by City Staff

2. Finance

a. Resolution No. 17, 2013, A Resolution Making Supplemental Appropriations And Authorizing Expenditures In Excess of Amounts Budgeted For The City Of Alamosa In Ordinance 12, 2013, and Known As the 2nd Budget Amendment

7. City Clerk/Municipal Court

b. Resolution No. 18, 2013, A Resolution Adopting the Attached Policy Establishing Selection of Mayor Pro Tem

8. City Manager/Legal

a. IRS Audit of Employee Classifications

1. Executive Session Pursuant to C.R.S. § 24-6-402(4)(b) to Receive Legal Advice Regarding Proposed IRS Agreements

2. Decision Regarding IRS Proposed Agreements

b. Potential Participation in the Best and Brightest Internship Program

D. Committee Reports

E. Staff Announcements

VIII. LOCAL LIQUOR LICENSING AUTHORITY ACTIONS

A. CONSENT CALENDAR B

The Consent Calendar allows multiple actions with one motion. Consent Calendar B contains routine items that are under Council's jurisdiction as the Local Licensing Authority. Council may remove a consent calendar item for separate consideration.

B. 1. Alamosa Elks Lodge #1297 Special Events Permit 9/21/13 James Duran Memorial

B. Liquor Licensing Items

2. Determine Penalty for Liquor Violation – Spuddy's Cantina

COUNCIL COMMENT

ADJOURNMENT

Alamosa City Council Meetings and Events

Updated 8/28/2013

All events are held in Alamosa Colorado unless otherwise noted

CITY HALL IS LOCATED AT 300 HUNT				
Date	**Time**	**Event**	**Location**	**Additional Information**
September 4, 2013	5:30 p.m.	Interview HPAC applicant	Jury Room	*
September 4, 2013	6:00 p.m.	Work Session - Initial Budget Presentation	Council Chambers	*
September 11, 2013	5:30 p.m.	Work Session - Budget	Council Chambers	*
September 5, 2013	3:30 p.m.	Employee Picnic	Cole Park	****
September 18, 2013	6:00 p.m.	Budget Work Session (tentative, if needed)	Council Chambers	*
September 25, 2013	4:00 p.m. meeting 5:30 p.m. social hour 6:30 p.m. dinner	CML District 8 Meeting	Mulligans on the Green	**
* Work sessions are informal Council meetings for the purpose of discussion among Council members. No action is taken. The public is invited to attend, but public comment is generally not received unless otherwise noted.				
**Sponsored by outside entity. Council members have been invited to attend. Please check with originating entity for registration information				
*** Citizens are encouraged to attend this community event				
**** This is a purely social event and not open to the public				

COUNCIL COMMUNICATION

<table>
<tr><td>DATE: August 23, 2013</td><td>AGENDA NO. Work Session</td><td rowspan="4">SUBJECT:

Interview Jordan Gortmaker in consideration of the HPAC vacancy</td></tr>
<tr><td colspan="2">Department Head:
Judy A. Egbert, City Clerk</td></tr>
<tr><td colspan="2">City Manager:
Heather Brooks</td></tr>
<tr><td colspan="2">PRESENTED BY: City Council</td></tr>
</table>

Recommendation

Interview Jordan Gortmaker.

Background

There are two long-standing vacancies on the Historic Preservation Advisory Committee. Jordan Gortmaker has applied to serve on this board. Council is asked to interview him at this work session, then consider appointment at the next meeting.

Issue Before the Council

Does Council wish to conduct this interview?

Alternatives

- Conduct the interview
- Do not conduct the interview and direct staff.

Fiscal Impact

N/A

Legal Opinion

N/A

Conclusion

The HPAC has been established by Council through a Resolution that specifies its role. These seats have been vacant for a long time, and it is appropriate that Council progress toward filling these vacancies.

This action furthers Council's goal of community through citizen involvement.

City of Alamosa
POB 419
Alamosa, CO 81101

Application For Board or Commission

Applicant Name: Jordan Gortmaker Date: 8/5/13

Street Address: [redacted]

Mailing Address: "

Phone Number: (home) [redacted] (office)

Email: [redacted]

How long have you lived in the City of Alamosa? Since 7/5/13

Board or Commission you are applying for: Historic Preservation

Why do you want to serve on this Board or Commission? My education and life-long passion has been the study of history. As a new arrival in the city of Alamosa I want to learn about and help preserve the historical fabric of my new community.

Do you have any special qualifications for this Board or Commission? If so, please describe.
I have a Bachelor's Degree in US History from the University of Dallas & a Master's Degree in Public History from the University of Colorado Denver.

Since most Board and Commissions meet in the evenings, what evenings are you available to serve?

Monday X Wednesday X Friday X

Tuesday X Thursday X

Signature of Applicant: Jordan A. Gortmaker

Jordan Gortmaker

[redacted]

Objective:

I wish to further my real-world education and apply the skills honed in academic, museum, and library settings in new and exciting ways. Regardless of the work environment, I bring a strong work ethic to all that I do and complete any assigned tasks in a timely manner.

Skills:

- experience in conducting academic historical research
- museum exhibits research
- experience in the creation of inventories and catalogs
- experience in a variety of library environments
- PastPerfect museum software

Education:

Bachelor of Arts in History (United States History)	University of Dallas Graduation: May 2011
Master of Arts in History (Public History/Museum Studies)	University of Colorado Denver Graduation: May 2013

Work History:

Adams State University — Circulation Supervisor — 07/2013 – present
- Hiring, training, and supervising work-study students
- Processing billing and overdue notices
- Enforcing circulation policies

Montview Elementary School — Librarian — 08/2011 – 05/2013
- Cataloging new materials and weeding out the old
- Daily interaction with children and staff
- Maintenance of overall library order

The University of Dallas — History tutor — 09/2010 – 05/2011
- One-on-one personal interaction
- Clear, concise, and informative conveying of facts
- Techniques for effective learning and studying

William A. Blakley Library — Library Aide — 09/2007 – 05/2011
- Customer service: helping patrons locate materials
- Handling of cash and operation of the cash register
- Organizational and categorizing skills

Volunteer/Intern Work:

History Colorado | Koch Fellowship | 07/2012 – 06/2013

- Exhibits research under the direction of the state historian
- Photo/microfilm inventory and reference question work in the Stephen Hart Research Library
- Collection processing with the Curator of Books and Manuscripts

Aurora History Museum | Volunteer | 08/2011 – 08/2012

- Exhibit research using archival materials and microfilm
- Cataloging photographs with the use of the PastPerfect software

Other Accomplishments:

- Curator of the exhibit "Theater of Tomorrow: A History of the Aurora Fox" currently on display in the Aurora Fox Arts Center (Aurora, CO)
- 2012-2013 Koch Fellowship at the History Colorado Center
- Author of "Fiesta on the Front Range: A History of Casa Bonita" published in *The Lakewood Historian* (Summer 2012)
- Author of "Neon Ghosts: The Lives and Afterlives of Six Denver Movie Theaters" published in the University of Colorado Denver's *Historical Studies Journal* (Spring 2012)
- Recipient of the Coulter Scholarship
- Recipient of the Aspiring Scholars scholarship
- Graduated cum laude (University of Dallas)

References:

Dr. William Convery	State Historian (History Colorado)	[redacted]
Dr. Thomas Noel	Professor of History (CU Denver)	[redacted]
Ms. Laura Ruttum Senturia	Library Director (History Colorado)	[redacted]
Ms. Jennifer Cronk	Collections Curator (Aurora History Museum)	[redacted]
Ms. Michelle Barone	Principal (Montview Elementary)	[redacted]

University of Colorado Denver
College of Liberal Arts and Sciences

Department of History

Campus Box 182
855 Lawrence Street, Room 562
P.O. Box 173364
Denver, CO 80217-3364
Office: 303-556-4830
Fax: 303-556-6037

To Whom It May Concern:

RE: Jordan Gortmaker

Thomas J. Noel

From: Thomas J. Noel, Professor of History &Director of Public History & Preservation

As graduate advisor to a star student in our CU-Denver History M.A. program, Jordan Gortmaker, I hope you will take a closer look at one of the brightest, most congenial, responsive and able students I have seen in 43 years of university teaching. Jordan gets in assignments on time and has done well written as well as thoughtful and well researched book reports and research papers. His excellent research and fine, witty writing led our department to publish his work on historic theaters in the prestigious CU-Denver *Historical Studies Journa*l.

Among many other accomplishments, Jordan has:

- graduated cum laude from the University of Dallas in May 2011 with a Bachelor's degree in History
- co-founded and served as an officer of the University of Dallas History Club from 2009-2011
- Received an Aspiring Scholars Award while at the University of Dallas
- worked as an American History tutor at the University of Dallas
- worked as a Library Aide at the University of Dallas
- is the Librarian at Montiew Elementary School in Aurora, CO
- received the Viola Vestal Coulter Colorado History Scholarship for 2012-2013
- volunteers at the Aurora History Museum since August 2011 where he has aided the staff in exhibit research and photograph cataloging
- consistently made the Honor Roll/Dean's List throughout high school and as an undergraduate. During his first semester of graduate school he made a 4.0

If I may be of any further help to you in assessing Jordan Gortmaker please call (303-355-0211) or e-mail me (tom.noel@ucdenver.edu) anytime.

City of Aurora

Aurora History Museum
Historic Sites & Preservation
Cultural Services Division
Library & Cultural Services
15051 E. Alameda Parkway
Aurora, Colorado 80012
Phone: 303-739-6660
Fax: 303-739-6657
www.auroramuseum.org

To Whom It May Concern:

My name is Jennifer Cronk, and I am the Curator of Collections for the Aurora History Museum in Aurora, Colorado. My duties as curator involve the training and management of volunteers at the museum, which is how I became acquainted with Jordan Gortmaker. Jordan first contacted me in August of 2011 to learn more about our volunteer opportunities and has been volunteering at the museum on a weekly basis since that time.

One of the projects Jordan spent a great deal of time on involved researching the past mayors of Aurora for use in a future exhibit. To accomplish this, he carefully went through original town documents and utilized the microfilm readers to peruse early newspapers for any mention of the mayors. Although this type of work can often become tedious, Jordan never complained and was able to compile pages of historical information to include in the exhibit.

More recently, Jordan has begun to catalog photographs from our Buckley Air Force Base collection. I am extremely grateful for his attention to detail as he inputs information into our PastPerfect Museum Software database. He goes above and beyond the call of duty to identify specific details in each photograph, which is extremely useful for both museum staff and researchers.

Jordan is able to work independently, but he is also not afraid to ask questions in order to ensure the work is done correctly. We are very appreciative for the work he has contributed to the museum, and I believe that the knowledge he has gained both here and through his graduate studies will make him a valuable asset in other institutions as well.

Sincerely,

Jennifer Cronk
Curator of Collections
Aurora History Museum

NAME: Gortmaker, Jordan
STUDENT NR: [redacted] BIRTHDATE : [redacted]
PRINT DATE: 08/06/2013

*** ISSUED TO STUDENT ***

Issued To: Jordan Gortmaker
[redacted]
Alamosa, CO 81101

Requested By: Jordan Gortmaker

Degrees, Certificates and Licensure

Master of Arts — MAY 18, 2013
CU Denver
College of Lib Arts & Sci GRAD
Major : History
Option : Public History

Other Institutions Attended:

HIGHER EDUC. INSTITUTIONS: Univ Dallas, Irving TX — 09/07 - 05/11

COURSE TITLE	CRSE NR	UNITS	GRADE	PNTS
--------- Fall 2011 UC Denver ------ College of Lib Arts & Sci GRAD History				
History in Museums	HIST 5231	3.0	A	12.0
Intro Prof Study of History	HIST 6013	3.0	A	12.0
Seminar: Colorado Studies	HIST 6992	3.0	A	12.0
ATT 9.0 EARNED 9.0 GPAHRS 9.0 GPAPTS 36.00 GPA 4.000				
--------- Spring 2012 UC Denver ------ College of Lib Arts & Sci GRAD History				
Colorado Historic Places	HIST 5229	3.0	A	12.0
Introduction to Public History	HIST 5234	3.0	A	12.0
Hist Museums: Exhibits-Educ	HIST 5244	3.0	A	12.0
Rdgs: Special Subjects in Hist US & The World In The 20th C.	HIST 6931	3.0	A	12.0
ATT 12.0 EARNED 12.0 GPAHRS 12.0 GPAPTS 48.00 GPA 4.000				
--------- Summer 2012 UC Denver ------ College of Lib Arts & Sci GRAD History				
U.S. History Through Fiction	HIST 5238	3.0	A-	11.1
ATT 3.0 EARNED 3.0 GPAHRS 3.0 GPAPTS 11.10 GPA 3.700				

COURSE TITLE	CRSE NR	UNITS	GRADE	PNTS
--------- Fall 2012 UC Denver ------ College of Lib Arts & Sci GRAD History				
Mgmt Materl Cultre-Museum Coll	HIST 5133	3.0	A	12.0
Seminar: Spc Subjct in History Monuments and Memory	HIST 6989	3.0	A	12.0
ATT 6.0 EARNED 6.0 GPAHRS 6.0 GPAPTS 24.00 GPA 4.000				
--------- Spring 2013 UC Denver ------ College of Lib Arts & Sci GRAD History				
Masters Project:Public History	HIST 6952	3.0	A	12.0
Seminar: Spc Subjct in History Historic Preservation	HIST 6989	3.0	A	12.0
ATT 6.0 EARNED 6.0 GPAHRS 6.0 GPAPTS 24.00 GPA 4.000				

CUMULATIVE CREDITS :

	TR UNITS	CU UNITS	TOT UNITS	QUAL UNITS	QUAL PTS	GPA
GRAD	0.0	36.0	36.0	36.0	143.10	3.975

***** END OF ACADEMIC RECORD *****

Ingrid T. Eschholz
Registrar
University of Colorado Denver

ALAMOSA CITY COUNCIL
Wednesday, August 21, 2013
Minutes of the Meeting

The Regular Meeting of the Alamosa City Council was called to order on the above date by Mayor Kathy Rogers at 7:02 p.m. The Pledge of Allegiance was recited. Present at roll call: Mayor Rogers, Councilors Greg Gillaspie, Rusty Johnson, Josef Lucero, Leland Romero, and Marcia Tuggle. Councilor Griego previously requested to be excused. A quorum was declared. Also present: City Manager Heather Brooks, City Attorney Erich Schwiesow, and Deputy City Clerk Holly Martinez.

AGENDA APPROVAL. Councilor Tuggle requested Item C.1.a to be moved to Regular Business. It was moved by Councilor Tuggle and seconded by Councilor Lucero to approve the agenda as amended and to excuse Councilor Griego. The motion carried unanimously.

CITIZEN COMMENT

A. Audience Comments

Ron Brink thanked Mayor Rogers for her years of service to the City and wished good luck to the candidates in this year's election.

David Broyles announced his candidacy for the Mayor's seat.

Farris Bervig announced his candidacy for the At Large Council seat.

Jan Vigil announced his candidacy for the At Large Council seat.

B. Follow-Up None.

CONSENT CALENDAR A. It was moved by Councilor Romero and seconded by Councilor Johnson to approve Consent Calendar A as amended. The motion carried unanimously.
Items:
B. 1. Appoint One Member to the Library Board
C. 2. a. Receive July 2013 Expenditure Report
C. 7. a. Approve Minutes of Regular Meeting August 7, 2013
C. 8. a. Receive August 7, 2013 Monthly Reports

REGULAR BUSINESS

A. Presentations from Outside Agencies

1. Museum Update, Dorothy Brandt

Ms. Brandt gave an update of the museum.

Mary Hoffman, of Adams State Community Partnerships, presented the SLV Collaborative Mural Project to Council, which involves Adams State Community Partnerships, San Luis Valley Museum, and the Art Department. The collaboration will be a mural project to be located on the exterior wall of the San Luis Valley Museum, with the artist being Ian Wilkinson.

2. SLV Housing Coalition, Brian Garrison

Mr. Garrison presented information on the programs of the SLV Housing Coalition to Council.

C. Business Brought Forward by City Staff

1. Public Works

a. Accept Planning Commission's Recommendation to Approve Permitted Use By Special Review To Allow Outdoor Sales at 900 Block of 6th Street

Don Koskelin reviewed the recommendation, stating that there are strict hours involved and that the planning commission has also recommended that the approval be valid for a period of one year only, which gives the opportunity to relook at this and if the period needs to be extended, they will need to come in for another special review.

Councilor Romero moved, seconded by Councilor Johnson to accept the planning commission's recommendation to approve permitted use by special review to allow outdoor sales at 900 block of 6th Street for a period of one year. The motion carried unanimously.

4. Parks/Recreation/Library

a. Resolution No. 14, 2013, A Resolution Establishing The Oxbow Recreation Area

Councilor Johnson moved, seconded by Councilor Tuggle to adopt Resolution No. 14, 2013, establishing the Oxbow Recreation Area. The motion carried unanimously.

b. Resolution No. 15, 2013, A Resolution Supporting The Grant Application For A Local Parks And Outdoor Recreation Grant From The State Board Of The Great Outdoors Colorado Trust Fund For Funding The Alamosa Trails & Cross-Country Course (Phase I)

Heinz Bergann reviewed the resolution, which supports the Grant Application to the GOCO for an LPR Grant, which will be Phase 1, construction of the Alamosa Trails & Cross-Country Course. The first step was formalizing the park and they are getting the funding part. The cost is a little under $384, 000 and the request is $256,617 as the grant from GOCO.

Councilor Tuggle moved, seconded by Councilor Romero to adopt Resolution No. 15, 2013. The motion carried unanimously.

7. City Clerk/Municipal Court

b. Public Hearing – Ordinance No. 12, 2013, An Ordinance Approving an Intergovernmental Agreement with Alamosa County for Conduct of the November 5, 2013 Coordinated Election

Judy Egbert reviewed the Ordinance stating that this is the formal agreement between the City and the County for shared conduct of the election this November. The terms of the agreement are the same as they have been in previous elections.

Mayor Rogers opened the hearing at 7:53 p.m. and asked for those wishing to speak on this ordinance. There being none, the hearing closed at 7:53 p.m.

Councilor Lucero moved, seconded by Councilor Romero to approve Ordinance No. 12, 2013. The motion carried unanimously.

E. <u>Committee Reports</u>

Councilor Johnson reported on the recent HPAC meeting. He also stated that there are two open positions for this board.

Councilor Tuggle reported on the Senior Citizens meeting.

Councilor Gillespie reported on the recent Golf board meeting. The golf course is being well maintained and is has been great for the recent tournaments, which brought in $8,100 for the Golf Board. He also stated the restaurant is still having trouble with the HVAC, which is what was expected.

Councilor Lucero reported on the Marketing District Meeting and the Development Resource Group Meeting.

Mayor Rogers reported on the recent Rec Board meeting.

F. <u>Staff Announcements</u>

Ms. Brooks informed Council that the fireworks that were postponed from July 4 have been rescheduled to Monday, September 2, beginning at dusk.

Ms. Egbert updated Council on the current standings of the candidates for the upcoming election.

Mr. Koskelin updated Council on the progress of the Cole Park lighting and paving projects.

Mr. Bergann reviewed upcoming events, including the closure of the tennis courts at Carroll Park, Early Iron festival, fireworks display, City Employee BBQ, Beat the Heat competition, and the Fireball Run.

LOCAL LIQUOR LICENSING AUTHORITY ACTIONS

A. <u>Consent Calendar B</u>

It was moved by Councilor Gillespie and seconded by Councilor Johnson to approve Consent Calendar B as presented. The motion carried unanimously. Items: Special Events Permit – Alamosa Chamber of Commerce, BBQ Competition 9/6/13 and 9/7/2013

COUNCIL COMMENT

Councilor Romero questioned about the progress of the dog park. Mr. Bergann informed Council of what they have been working towards to consider that and are right now in the process of collecting data for the dog park.

Councilor Gillespie stated even though he was not present at the previous meeting, he liked the designation name of Oxbow Recreation Area for the City park, which is the largest park and located in Ward 1.

ADJOURNMENT. The meeting adjourned at 8:12 p.m.

Judy A. Egbert, City Clerk	Kathleen J. Rogers, Mayor

ALAMOSA CITY COUNCIL
Monday August 26, 2013
Minutes of the Meeting

A Special Meeting of the Alamosa City Council was called to order on the above date by Mayor Kathy Rogers at 5:54 p.m. The Pledge of Allegiance was recited. Present were: Mayor Rogers, Councilors Greg Gillaspie, Charlie Griego, Rusty Johnson, Josef Lucero, and Leland Romero, and Marcia Tuggle. A quorum was declared. Also present: City Clerk Judy Egbert and City Attorney Erich Schwiesow.

BUSINESS

Council is conducting this Show Cause hearing in its role as the Local Licensing Authority.

A. <u>Conduct Hearing to Show Cause why Tavern Liquor license should not be suspended or revoked – GloRi, LLC d/b/a Spuddy's Cantina and take action as appropriate</u>

Mayor Rogers introduced the issue and turned it over to Erich Schwiesow to conduct the hearing.

Counselor Schwiesow gave an overview of the proceedings. The Prosecutor may make an opening statement, and call witnesses to present evidence and testimony. The Licensee may cross examine any witnesses. The Licensee will then have the opportunity to present an opening statement, call witnesses, and present evidence and testimony. The Prosecutor may cross examine these witnesses. At the conclusion of the hearing, the prosecutor may make a closing statement first, followed by closing statement from the Licensee. Council may then take the issue under advisement, discuss, and come to a decision. The issue at hand is whether there is cause for revocation or suspension of the license, and if there is, what are the factors that weigh into making the appropriate action.

This is an administrative licensing hearing, and not a court hearing. Rules of evidence do not apply as in a criminal trial. Either party can address procedural questions throughout the hearing.

Mayor Rogers opened the hearing at 5:57 p.m.

Councilor Farish reviewed the issue, saying that this is the third violation by this licensee since the current owners have been in place in late 2010. The first violation was May 2011 for service to an underage person during a compliance check. Three days were actively served, with an additional seven held in abeyance for one year. He presented copies of the incident report to Council.

The second offense was February 2, 2013, also a compliance check failure, with more aggravated circumstances. Ada Boyce, one of the owners, directed the bartender to serve the minor when the bartender started to ask for ID, then went on to offer the underage person a shot of alcohol before they left the bar. When police officers arrived, Robert Davis, the other owner, used profanity, punched a cooler, and threw chairs. This carried a penalty of ten days active suspension with an additional ten days in abeyance for eighteen months. He presented Council with copies of the report for this violation

The third violation is now before Council and occurred on April 1, 2013, just two months after the second violation. This is even more serious, and involved personal injuries of a patron by Ada Boyce and her daughter, resulting in the patron being sent to the hospital. Ada was intoxicated. After telling the patron to get her feet off the bar, Ada physically attacked her, broke her dentures, and put her in the emergency room. After officers were contacted by the hospital, they arrived at Spuddy's to find Ada passed out on the floor. Ada was arrested, charged with assault, criminal mischief, and disorderly conduct. She was also cited with a violation of failing to report a disturbance on the premises, a city code violation. He distributed copies of the report from this incident.

Mr. Farish continued reviewing City records, and displayed one copy of the stipulation agreement entered into as a result of the February hearing.

Counselor Schwiesow noted that if Mr. Farish intends these documents to be tendered as Exhibits that the Clerk would need a copy.

Counselor Schwiesow offered the Licensee the opportunity to make an opening statement. Ms. Boyce and Mr. Davis declined to do so.

Duane Oakes was sworn. He testified that he is the Operations Commander for the police department, and a certified police officer. He became aware of this incident when the reports came across his desk. He reviewed the circumstances, and sent a letter to City Council requesting a Show Cause hearing.

In response to questions from Counselor Farish, Lt. Oakes stated:

- There are numerous and continuous problems at this location. Since November 2010, there were five incident reports during the remainder of 2010; In 2011 there were fourteen calls for service with thirteen reports generated; in 2012 there were six calls for service resulting in seven reports; and in 2012 there wree thirteen calls for service and eleven repots. The calls for service are those that originate from a dispatch call, and can include anything that requires emergency services to respond. This can be ambulance calls or criminal activity of various nature.
- This is not the usual number of calls when compared to other bars. It is not usual for a bar to have that high number of ambulance calls and criminal activity.
- His involvement was that of reviewing reports, and has not been personally involved in responding to these calls.

Counselor Farish distributed the letter from Lt. Oakes requesting that City Council consider revocation or suspension of the license.

Under cross examination, Ms. Boyce asked whether officers questioned anyone in the bar about the incident. Lt. Oakes replied that the victim and witness were interviewed. Ms. Boyce attempted to testify regarding the knowledge of other witnesses.

In response to questions from Councilor Griego, Lt. Oakes explained that a portion of the calls for service were for ambulance assistance. All of the calls originate from dispatch.

The other numbers represent the reports that were generated, either as a result of the calls for service or from other investigations. Licensees are required to call when there is a disturbance on the premises; in some cases calls were made and in other cases not. This particular incident first was reported by Ada as a person yelling at her from a vehicle. This was investigated and unfounded. A short time later, officers were dispatched to the emergency room for an assault victim. Upon investigating the assault, the investigation lead back to Spuddy's where the victim claimed to have been assaulted by Ada and her daughter. Ada did not report the assault or any disturbance in the bar.

In response to questions from Councilor Tuggle, Lt. Oakes repeated his earlier testimony regarding the explanation of service calls and reports.

In response to questions from Councilor Lucero, Lt. Oakes again repeated his earlier testimony regarding service calls and reports.

Councilor Tuggle clarified that the assault is an allegation at this point because it has not gone through the court system yet. Lt. Oakes added that this is true for the assault charge. Ada did enter a no contest plea to the failure to report a disturbance on premises and has been sentenced. Ms. Boyce added that she intends to plead not guilty to the assault charge.

In response to follow-up questions from Counselor Farish, Lt. Oakes clarified that the assault or disturbance was not reported at the time that Ada reported being yelled at from a vehicle. The instance when Robert Davis threw chairs was when he was cited for the February 13 incident for serving a minor. There are a disproportionate number of calls from this bar when compared to others. He consistently reviews all reports from all locations, and the severity of this case caused him to look into this further.

Brandon Pichon was called by Counselor Farish and sworn by Counselor Schwiesow. Officer Pichon described himself as a certified police officer employed since May 2010. He was dispatched to the emergency room to meet with an assault victim, Sheron Brannon and witness Shelly Porello. Ms. Porello described herself as a family connection to Ms. Brannon, and had been present at Spuddy's when the incident occurred. Ms. Brannon had injuries to her eyes and face, and damage to her dentures.

Counselor Farish marked photos of the victim's injuries taken April 1 as Exhibit A 1 through 7.

Robert Davis interrupted, asking if it is appropriate to hear evidence that has yet not been to trial. Counselor Schwiesow stated that this is not for the purpose of trying the case, but is to determine whether or not there is cause for revocation or suspension of the license. This hearing has no bearing on upcoming trial. It is appropriate.

Officer Pichon continued his testimony. After seeing the condition of Ms. Brannon, she told him that they had been drinking at Spuddy's, and that Ada had asked her to get her feet off the bar. She complied. Officer Pichon identified Ada Boyce. Ms. Brannon described Ada as drunk, and having attacked her with her hands. Ada's daughter Delia Malouff also attacked her with her hands, with injuries to arms and face as a result. Ada and Delia were jointly attacking Sheron. Officer Pichon took the initial statement, then talked to Shelly Porello who confirmed the account. The injuries were consistent with the description of the assault. After taking the statements at the hospital, Officer Pichon went to Spuddy's and met Officers Cooper and Coulson. He spoke with Robert Davis, and identified him as in the room tonight. When asked about the whereabouts of Ada and Delia, Robert Davis said that they had left and he didn't know where they had gone. Officer Pichon specifically asked if Ada was in the back of the bar and Robert replied no. Along with Officers Coulson and Cooper, Pichon went to the back of the bar. Robert Davis started yelling and using profanity. The officers opened the door to the office and saw Ada passed out on the floor. She was hard to revive, taking thirty seconds or longer to wake up. Robert Davis approached the officers in an aggressive manner. Officers told him to step back, and ultimately had to physically push him away. He continued yelling and using profanity. Officer Pichon noticed a strong odor of alcohol coming from Robert and his speech was slurred, consistent with signs of alcohol use. Ada also smelled of alcohol, her eyes were bloodshot and watery, her speech slurred, consistent with alcohol use. This occurred within an hour of leaving the hospital. The call for service at the hospital came in at 6:35 p.m. The call from the bar reporting the woman yelling at Ada from a vehicle came in at 6:11 p.m. This occurred during normal business hours for the bar.

This incident was one of a serious nature, and not a common situation for other bars. Other bars do have disturbances, but not of this level. This is the first time Officer Pichon has responded to a call for a disturbance at a bar where the owner was involved, and he does not see other bar owners operating a bar while intoxicated. This is a common occurrence at Spuddy's.

When offered the opportunity to cross examine, Ms. Boyce asked if she was working that day. Officer Pichon replied that he didn't know, but it appeared to be so because she had directed Ms. Brannon to remove her feet from the bar. Ms. Boyce attempted to testify, saying that the bartender Gary Ruybal couldn't get through because of Ms. Brannon's feet, and that she (Ada) was off that day.

Officer Pichon responded to other questions from Ms. Boyce, saying that he did not question other customers in the bar about the incident, and that she (Ada) was passed out in the office, not in the bar area.

In response to questions from Mr. Davis, Officer Pichon stated that the photos of injuries were consistent with the testimony from witnesses. The breath alcohol levels could be consistent with the facts as testified, and he did not check for substances other than alcohol.

Ms Boyce again attempted to testify, saying that no beer bottles were thrown; and that she believed that she had complied with the requirement to report a disturbance by her conversation with Officer Cooper.

In response to questions from Councilor Tuggle, Officer Pichon said that he did not see anyone tending bar other than Ada and Robert. He did not give a breath test to Ada or Robert. He interviewed the victim and witness in the same room at the hospital. They both submitted written statements.

In response to questions from Councilor Lucero, Officer Pichon stated that the victim was able to testify clearly even through her BAC was .09. Shelly Porello was more intoxicated, but Officer Pichon said that he had no reason not to believe their account of the incident. The injuries were consistent with statements. He admitted that the victim's injuries could have potentially be caused by something separate from the assault.

In response to a question from Councilor Johnson, Officer Pichon said that he talked to Delia that evening around 9:45 p.m. and she gave a written statement. Counselor Farish offered to produce a copy of the statement

In response to a question from Councilor Gillspie, Officer Pichon repeated the BAC result for the victim as a .09.

In response to follow-up questions from Counselor Farish, Officer Pichon said that Ada did not have any signs of injury and did not appear to have been assaulted. He examined her hands when she went to jail and she had no injuries. Counselor Farish provided Exhibit C 1 thorough 6. C1 is Ada's hands from the top; C2 is her palms; C3 is Delia Malouff's face; C4 is Delia's left arm; C5 is the top of Delia's hands; C6 is Delia's palms. Delia is Ada's daughter. Officer Pichon confirmed that the statements say that both Ada and Delia were attacking Sheron.

In response to questions from Councilor Griego, Officer Pichon stated that Ada did not show any signs that she had been fighting and was passed out with no injuries. Delia had several injuries to her arms, face, and hands.

In response to a question from Councilor Johnson, Officer Pichon confirmed that statements were taken from Sheron and Shelly that same night.

In response to questions from Councilor Lucero, Officer Pichon said that in Shelly's statement, she said that Delia was the one who attacked Sheron, and Delia had wounds consistent with this statement. He did not pursue other witnesses that night, as Mr. Davis was irate and had already lied about Ada's whereabouts, and he didn't want to escalate the situation.

In response to a question by CouncilorTuggle, Officer Pichon said that in her statement Shelly said that she never saw Ada fighting; although Officer Pichon is relying on what the witnesses told him personally that night. There may have been a bartender there that he did not have occasion to see.

Sheron Brannon was called to testify by phone, and sworn. She provided the following testimony:

She said that she was born in Denver, then moved to Texas, then back. She had been in the bar only twice before, and wouldn't have gone if she knew of its bad reputation. She went there because they allowed her to bring her dog in with her. She would only go in during the day. Her friend Shelly was feeling bad because it was her deceased brother's birthday. They went to visit another friend, Sally, but it turned out that Sally wasn't home. So they decided to go to Spuddy's. She carried her dog in. Upon entering, she noticed Ada and Robert behind the bar taking shots of whiskey. Robert sat at the end of the bar and offered her his chair. She sat down and Ada came and picked up the dog. She put her calves on the end of the bar, not in anyone's way. Nothing was said. She had just paid her tab. The report says that she had three beers, but it was just two. The tab was just over ten dollars. She had just received her credit card slip back, when Ada yelled at her to get her feet off the bar. She immediately put her feet down and said I'm sorry. The next thing she knew, she had been knocked out and woke up 25 feet from the bar on the floor. She was trying to cover her face because Ada and Delia were on top of her beating her. She believes they would have killed her if others were not there. The next thing she remembered was sitting up in a chair, so she was knocked out two different times. She remembered asking for her dog, which Shelly found behind the bar. Sally arrived and took them to the hospital. Her dentures were broken, an cost $1200 to replace. They were broken with a bottle. Dalia was the one hitting her. Ada participated also. She is 58 years old and partially paralyzed on the left side. Both Ada and Delia were beating her at the same time, and she remembered four fists coming at her at once.

Before the assault, she remembered Delia serving drinks. Ada was serving drinks to others and talking to everyone. Robert was not serving anyone, and she has no complaint against him. From what others told her, Robert was the one who pulled Delia off of her. Shelly had walked outside because Sally had arrived, and heard something from the bar. When asked if she ever hit Ada, she said absolutely not. She did not throw a beer bottle, as some said later. She apologized for having her feet on the bar. She believes that Delia was the one to knock her out the first time, and both Ada and Delia the second time. She believes that the reason they assaulted her is that they were drunk on whiskey, although she didn't see Delia drinking, just Robert and Ada. She surmised that Delia was coming to the aid of her mother.

She repeated her testimony multiple times.

In response to questions from Robert Davis, she said that she did not hit Delia with a beer bottle. Shelly was not inside when the incident happened, but came in during and helped pull Ada off of her. Robert did not take part in the assault. Sally drove when they left the bar. She did not remember seeing the male bartender. She did not smoke any crack.

In response to questions from Councilor Griego, she responded that she did not know her BAC, but had two beers there, even leaving a little in the bottle.

In response to a question from Councilor Griego, she said that there were other people at the bar, but she did not know them. She only knew one person named Kelly. There were about 12 to 15 people in total.

In response to questions from Councilor Tuggle, she said that she got to the bar between 2:30 and 3:30 p.m., and the incident happened about 4:30 p.m. She went straight to the hospital after the assault. She did not see anyone else tending bar except Delia. She had one additional beer with lunch at Chili's earlier that day. Sally's last ame is McDonald. Other witnesses are Kelly Bennett and Pam Trujillo. She was uncertain if Pam Trujillo would be willing as a witness because the rumor is that Pam will take over the bar. Kelly's dad was principal at a school in Alamosa. She saw Ada and Robert drink two shots, but didn't know how much else they drank that day.

In response to questions from Counselor Farish, she said that Kelly left right after the beer bottles were thrown. He and Pam levft at the same time. She did not know if he saw more than that. Her dentures were knocked out, and her face was injured from fists. Both Ada and Delia attacked her at the same time.

In response to cross examination by Ada Boyce, Ms. Brannon said that Delia was behind the bar. Ms. Boyce attempted to argue, saying that she was not. Ada continued questioning whether or not she remembered "Chopper" being behind the bard. When she replied that she did not see anyone else behind the bar, Ada again tried to argue the point.

There being on further questions, Ms. Brannon was dismissed.

In response to questions from Council, Officer Pichon:

- Repeated his testimony regarding BAC and his professional opinion on what that means in terms of impairment and how these levels relate to DUI laws.
- Repeated his testimony regarding the time of day of the calls and incident.
- Repeated his testimony regarding the actions of Robert and Ada when he arrived at the bar.
- Noted that he did not witness Sheron and Shelly leave the bar so he did not know who drove.
- Elaborated on the circumstances of his interaction and statements from Sheron and Shelly.
- There was no mention of Sally when he did his investigation. Tonight is the first he's heard of Sally.

Chief Craig Dodd was called and sworn. He provided his credentials as a certified police officer of 29 years and currently the Chief of Police for the City of Alamosa. He reviewed the reports of this and other incidents at Spuddy's. His recommendation and conclusion for Council is that there are certain expectations of responsibility to be in control of what happens in a bar. No matter who is responsible for the assault, it is the licensee's responsibility to be in control of what happens in the bar. The facts are clear. Robert Davis's actions resulted in an arrest for obstruction. Officer Pichon is an expert in the signs of intoxication. All officers receive basic training in this area, and Officer Pichon has been further trained as a subject matter expert in drug recognition, including alcohol. He believes that Ada was intoxicated. Whether she struck the victim or not, she caused things to occur in her bar under her direction. She should take responsibility for what took place in this case and in prior cases.

Under cross examination by Ada, Chief Dodd said that he was not present at the scene to know if there was another bartender there, nor where she was found. Ada again attempted to testify, saying that Robert didn't realize that she had gone in the office.

Counselor Swichesow offered the opportunity for the Licensee to testify and/or call witnesses.

Robert Davis and Ada Boyce were both sworn.

Ms. Boyce testified that the lady came in with her dog. Robert offered her his seat, and she put her feet on the bar. Her daughter (Delia) was not there. Gary Ruybal (Chopper) was tending bar. He is a large man and was having trouble getting through. She asked Ms. Brannon three times to remove her feet, and became irate after the third time. The lady hit Delia with a beer bottle. They didn't run her credit card until she was by the door. The dog was scared because Ms. Brannon was throwing a beer bottle. As she was leaving, Delia hit her in the back of the head.

Officer Cooper was in the alley at the time with someone in custody. Ada told him that there was a lady causing an altercation and that she had seen her leave in a yellow SUV. Ada had been having medical problems and seizures, so she went in the office to lay down. She didn't know what she was being arrested for.

Robert Davis testified that he was not aware that this was a hearing tonight, and would have brought witnesses if he had known. He recounted the facts just as Ms. Boyce had presented them. He was upset that the officers needed to be in the office, as he had his safe open and papers on the the desk. He didn't know Ada had gone to the office. He knew Delia had left and assumed that Ada had left with her. When Officer Cooper came is assumed that the lady who started the disturbance had been arrested.

Mayor Rogers pointed out that the purpose of this hearing is not to determine guilt in the assault, but to determine whether or not there is reason to take action regarding the license.

Counselor Farish asked if Mr. Davis had received the Notice to Show Cause, to which he replied yes.

In response to questions from Counselor Farish, Ms. Boyce replied that she had operated the bar for three years. She has always been familiar with liquor laws, but didn't know about the requirement regarding a disturbance on premises. She thought that talking to the officer was sufficient, but now realizes that she should have called dispatch. She admitted that even if she wasn't familiar with that requirement that she should have called the police when a beer bottle was thrown.

In response to questions from Council, Ms. Boyce said:

- Ms. Branon never signed her credit card slip. She still has the unsigned copy.
- She was not drinking behind the bar.
- Gary was tending bar.
- She has never been drinking while tending bar.
- Gary Ruybal is a regular employee.
- Two beers sounds correct for the amount that Ms. Brannon bought, although others may have bought some for her in addition.
- She did remember Shelly being there throughout the time of the situation.
- Robert brought her behind the bar.
- Pam Trujillo was there, as well as Kelly Bennett
- Officer Cooper was in the alley.

- She saw Sheron leave driving a yellow vehicle, and Sheron was screaming profanities at her.
- She does not know of a Sally being there at all.

In response to questions from Counselor Farish, Ms. Boyce said that Delia arrived just when the lady was yelling at her. It was just a verbal argument at that point. Delia hit Sheron just one time. She can't say how Sheron got her wounds, and Sheron was driving when they left. There was no blood in the bar. She gave Sheron her dog and credit card, and she drove off.

Officer Cooper was called and sworn. He provided the following testimony:

He had just arrested a person on an unrelated charge that happened to be in Spuddy's. This had nothing to do with the situation at hand. He had parked in the alley next to Spuddy's. Ada came up to the car. She said that someone in the street was yelling at her. She didn't say anything about any problem in the bar. He did not hear any disturbance from inside the bar, although he was in his car with the windows rolled up.

When he went into the bar to arrest the suspect, he did see a heavy man at the bar who was stocking alcohol. It's possible that others did not see him because he wasn't in the front of the bar. He did not speak with him. He asked Ada if the suspect that he just arrested owed her any money.

Ada did appear intoxicated. She was stumbling around. Robert was seated at the end of the bar with a pitcher of beer. This happened around 6:05 p.m.

Under cross examination, Mr. Davis asked if he remembered getting a call from him. Officer Cooper said that he did, after everything was over. He did not say that Ms. Brannon was arrested.

Counselor Farish provided a closing statement:

It is unusual to request revocation of a liquor license. Such a request comes as a culmination of several situations, growing in intensity. This is the third offense. The first was selling to an underage person. The second was selling to an underage person, but also involved conduct by Mr. Davis of interfering with the officers, throwing chairs and telling them to get out of his bar. This attitude is cause for concern. This situation follows only two months later after the February situation. He has to question whether they learned from the February situation. These folks are having real problems trying to operate a bar, partly because of their own alcohol consumption. They're intoxicated on every occasion he has encountered them. They are trying to operate bar when totally intoxicated. The testimony of Ms. Boyce is not consistent with the physical evidence before you of the injuries to Sheron. She says that her daughter struck her twice, yet when you look at the injuries they are consistent with the testimony from the victim. She was clearly beaten, and her dentures broken. Chief Dodd's testimony and recommendation is that the only plausible sanction is revocation. They have been given chances. Not only are they not improving, but are graduating in intensity and time from one incident to another. He requested that council consider those facts in reaching its conclusion.

Robert Davis made the following closing statement:

Some of the evidence is off. His is probably the safest bar in town. There are lots of incident reports showing up because of the location. There are people passing out in front of the bar all the time. He has made six ambulance calls for people that haven't even been in the bar. He calls it in, can't just let them lay there and bleed. This is the same as calling an officer if they need an officer. It doesn't mean anything happens in bar. There are very few incidents. He saw the door fly open in his personal office, where there was money and paperwork out. He just needed an answer of why they were in there.

Mayor Rogers closed the hearing at 8:37 p.m.

Counselor Schwiesow told Council that they could either act tonight, or take it under advisement for future action. If action is delayed, he will prepare draft findings for their consideration. If Council determines that the violation occurred tonight, but wants to delay penalty imposition, he will draft findings stating this but with the penalty open.

Councilor Griego asked the licensees if they understood that Council could revoke this license, and said that he was troubled that Mr. Davis says he did not understand that he had the right to have legal counsel and witnesses present. Mr. Davis said that he did not understand prior to the hearing, but did understand now.

Councilor Tuggle pointed out that regardless of what additional penalty is imposed, the ten days stayed from the last offense would need to be served.

Councilor Lucero said that the conduct of a liquor business owner is held to a high standard. It is their responsibility to remain sober and capable of performing protective actions for patrons and themselves. This is not acceptable behavior and is unacceptable in the community.

Councilor Johnson agreed with Councilor Lucero's comments. He expressed concern that it took a long time hearing evidence on the assault case, but noted that the role of Council tonight is to consider the licensee's obligation in reporting the disturbance and complying with state regulation. There is no doubt that there was some type of assault, and that the owners were required to report that disturbance. If Ms. Boyce was taking credit cards, that implies that she was working at bar.

Ms. Boyce spoke from the audience, saying that Chopper ran the card. They did they report it. She questioned why they are having so many issues dealing with the police, when they need a good relationship with the police.

Counselor Schwiesow clarified that it is not Council's role to decide who assaulted whom. Regulation 47-900 requires orderliness of an establishment. Reporting an incident is a separate city ordinance and has no counterpart in the liquor code. Reporting isn't really the issue. When acting as the Local Licensing Authority, Council needs to make reference in particular to the liquor licensing provisions.

Counselor Farish pointed out Regulation 47-600, which gives authority to act on any other violation which becomes known during a hearing called for any violation purpose.

Councilor Tuggle noted that the Show Cause notice doesn't specifically say that the licensee may have brought witnesses. There is nothing to prohibit owners from drinking behind the bar as long as there are other responsible people there.

Councilor Romero said that this action is not affected by the assault issue, but rather the disturbance on premises. It is unlawful for the licensee to permit a disturbance. Sheron said that Ada was very intoxicated, as was also testified by two officers. This is not an orderly act. Ada went out of her way to speak with Officer Cooper in his vehicle, yet she did not mention the disturbance.

Counselor Schwiesow pointed out CRS 12-47-601 regarding hearings, saying that the Local licensing Authority has the power after a hearing to suspend or revoke a license for any violation by licensee or agents of provisions of this article, any rules or regulations pursuant to this article, or any terms, conditions or provisions of the license issued. He doesn't believe Council has authority to revoke for code violations.

Counselor Farish maintained that Regulation 47-600 D does allow Council to consider any law violation, including a local code.

Counselor Schwiesow noted that the mechanism for a code violation is municipal court, and this has already been handled through the court.

Councilor Lucero said that he is concerned with the progressive negative nature of the conduct of this business and feels it is coming to a head. He referred to another license that was ultimately revoked, saying that this was headed in the same direction if it is allowed to continue.

Councilor Griego added that the licensee needs a clear picture of what the bar business is about. It is a hard business. Owners can't drink on one side of the bar and and babysit the people on the other side. Disturbances should be reported, but many times owners try to stop the altercation yourself. It's not uncommon for disturbances to not get reported. In this case there are drunks accusing other drunks. He advocated considering draft findings of fact that would allow a decision either way.

Councilor Tuggle said that Regulation 47-900 talks about knowing permitting a disturbance. She feels that "knowingly" doesn't apply in this case. There are lots of questions about the facts. She favored a suspension rather than revocation.

Councilor Johnson said that these ladies came to a bar to have a beer. That's why people go to bars. Their BAC doesn't matter. It is the bar's responsibility to keep people safe. People come there to have a good time, drink and give money to the owner. The customers could go to a liquor store and buy liquor for less. They go to a bar to have a good time. It is clear from the pictures of the victim that somebody punched her. The ones responsible for keeping her safe are the ones who hit her.

Councilor Gillaspie agreed, saying it is irresponsible for the owners to be involved.

Mayor Rogers said that liquor license holders need to act at a higher level. She doesn't believe this is happening in this situation. When things get out of control, somebody has to be in control and that didn't happen. It's been said that maybe if this were a different business Council would give them a break. But Council has revoked licenses. It is clear that it's escalating, and she doesn't what that to happen again. She is concerned about the actions of owners, not just the patrons. They have been given many opportunities, and is concerned about the safety of this location.

Councilor Tuggle moved, seconded by Councilor Griego that the violation occurred, and the penalty will be decided at the next meeting. On discussion, Councilor Romero expressed interest in acting tonight. The motion carried four (Rogers, Tuggle, Griego, Gillaspie) to three (Lucero, Romero, Johhson). The motion carried.

ADJOURNMENT. The meeting adjourned at 9:16 p.m.

______________________________ ______________________________
Judy A. Egbert, City Clerk Kathleen J. Rogers, Mayor

SAN LUIS VALLEY Small Business Development Center

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(719) 589-3682
donna@slv-sbdc.com
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IMPACT REPORT Jan-July, 2013

CO Alamosa

Distinct Customers	15				Total Records	17	
Jobs Created	12.0	Loans	Count	Amount	Contracts	Count	Amount
Jobs Retained	14.0	App. Submitted	0	$0	Commercial/Private	0	$0
Started Business	9	Loan Obtained	2	$155,000	DOD Prime	0	$0
Exporting	0	SBA Loans Obtained	0		DOD Sub	0	$0
8(a) Certified	0	Approved, not Obtained	0		Federal Prime	0	$0
MBE Certified	0	Financial	Count	Amount	Federal Sub	0	$0
Potential Success Story	6	Owner Investment	11	$14,290	Prime Bids Submitted	0	$0
Success Story on File	3	Other Capital	0	$0	Prime Bids Awarded	0	$0
SBDC Supporter	0	Sales Increase $	3	$23,000	Sub Bids Submitted	0	$0
Export Related Impact	0	Sales Increase % (avg)	0	-1.#IND	Sub Bids Awarded	0	$0
		Total Capital Formation (Loan Obt. + Owner + Other)		$169,290			
		Miscellaneous	0	0			

Grand Total

Distinct Customers	27				Total Records	31	
Jobs Created	20.0	Loans	Count	Amount	Contracts	Count	Amount
Jobs Retained	14.0	App. Submitted	0	$0	Commercial/Private	0	$0
Started Business	16	Loan Obtained	5	$461,000	DOD Prime	0	$0
Exporting	0	SBA Loans Obtained	0		DOD Sub	0	$0
8(a) Certified	1	Approved, not Obtained	0		Federal Prime	0	$0
MBE Certified	0	Financial	Count	Amount	Federal Sub	0	$0
Potential Success Story	11	Owner Investment	20	$37,540	Prime Bids Submitted	0	$0
Success Story on File	3	Other Capital	0	$0	Prime Bids Awarded	0	$0
SBDC Supporter	0	Sales Increase $	5	$226,000	Sub Bids Submitted	0	$0
Export Related Impact	0	Sales Increase % (avg)	0	-1.#IND	Sub Bids Awarded	0	$0
		Total Capital Formation (Loan Obt. + Owner + Other)		$498,540			
		Miscellaneous	0	0			

City County Specific Data – SLV NUMBER OF NEW CLIENTS

Customers/Sessions/Summary

Created Wednesday, August 14, 2013 1:57:29 PM by dwehe Reportable Centers -- 2001 Reportable Programs -- All

Grouped By -- Customer County,

Customers -- Center: All, Customer Status: ~~All,~~

Sessions -- Date: Between 1/1/2013 > 7/30/2013, Program: All, Session Type: All,

County	Distinct Customers	Sessions	Contact	Prep	Total	Travel	Miles
CA Los Angeles	1	1	2.00	0.00	**2.00**	0.00	0.00
CO Alamosa	87	245	297.70	54.15	**351.85**	85.25	1,365.00
CO Arapahoe	1	4	6.25	0.75	**7.00**	0.00	0.00
CO Conejos	21	54	64.10	15.75	**79.85**	4.75	307.00
CO Costilla	7	23	38.80	2.75	**41.55**	2.00	120.00
CO Delta	1	1	1.00	0.50	**1.50**	0.00	0.00
CO Mineral	4	7	5.60	3.10	**8.70**	1.25	34.00
CO Rio Grande	33	71	79.45	12.25	**91.70**	23.25	511.00
CO Saguache	14	41	41.40	5.75	**47.15**	5.25	1,374.00

Grand Total

Distinct Customers	Sessions	Contact	Prep	Total (C+P)	Travel	Miles
169	447	536.30	95.00	631.30	121.75	3,711.00

BALANCED SCORECARD

Jan- July, 2013 (7 months)

Perspective	Theme	Strategic Objective	Type (Lead/Lag)	Tracked by	Measure	8/2/2013 Metric	Target	Status %	Status	YTD Trend	Year Comparison 2011 Metric	2012 Metric
Economic	Core	Increase Jobs Created	Lag	LC - EX	Jobs Created	20	40	50.00%			85	29
Economic	Core	Increase Jobs Retained	Lag	LC - EX	Jobs Retained	14	40	35.00%			27	6
Economic	Core	Start New Businesses	Lag	LC - EX	Business Starts	16	35	45.71%			32	20
Economic	Core	Produce Capital Formation	Lag	LC - EX	Capital Infusion	498,540.00	1,500,000.00	33.24%			1,919,200.00	862,600.00
Client	Core	Deliver Programs and Services for Target Demographics	Lead	LC - EX	Target Demographics	67	75	89.33%			89	97
Internal	SWB	Deliver Programs and Services for Emerging Industries	Lead	LC - EX	Emerging Industries	13	25	52.00%			54	35
Client	Core	Satisfy Clients	Lag	LC - EX	Training Satisfaction	95.25	90	105.83%			95	95.5
Client	Core	Offer valuable programs and services	Lag	LC - EX	Counseling Satisfaction	70.5	90	78.33%			91	94.08
Internal	SWB	Increase Repeat Clients	Lag	LC - EX	Long Term Clients	39	75	52.00%			75	74
Internal	SWB	Increase Existing Business Clients	Lag	LC - EX	Existing Business %	57.99	60	96.65%			57.02	59.58
Economic	Core	Increase Client Sales	Lag	LC - EX	Increased Sales	276,000.00	75,000.00	368.00%			85,600.00	191,780.00
Economic	Local	Increase Client Contracts	Lag	LC - EX	Increased Contracts	0	100,000.00	0.00%			177,118.00	2,436,745.00
Client	Core	Facilitate Valuable Trainings	Lead	LC - EX	Event Attendance	304	150	202.67%			431	469
Client	Core	Facilitate Valuable Trainings	Lead	LC - EX	Training Count	29	15	193.33%			32	47
Client	Core	Provide one-on-one Consulting	Lag	LC - EX	Client Count	169	230	73.48%			242	240
Client	Core	Provide one-on-one Consulting	Lag	LC - EX	Average C&P Hours	3.79	5	75.70%			4.31	4.8
Client	Core	Provide one-on-one Consulting	Lag	LC - EX	Client Sessions	407	600	67.83%			668	742
Client	Core	Provide one-on-one Consulting	Lag	LC - EX	Total C&P Hours	639.7	1,000.00	63.97%			1,044.21	1,152.44
Internal	Core	Increase Hours of Professional Development	Lead	Center	Professional Development		80	%			202	223
Internal	Core	Improve Efficiencies through Technology	Lead	Center	Technology Activities		2	%			2	7
Internal	Core	Understand Cient Needs	Lead	Center	Assessments		3	%			2	4
Internal	SWB	Promote the Brand	Lead	Center	Brand Building		12	%			10	10
Stakeholder	Core	Build and Strengthen Stakeholder Relations	Lead	Center	Stakeholder Activities		6	%			21	66
Internal/Financial	Local	Sustain and Develop Program Income	Lead	Center	Program Income		750	%			1,170.00	1,015.00

Core - Core Values
SWB - State Wide Breakthrough
LC-EX - Lead Center/Center EX

San Luis Valley SBDC

COUNCIL COMMUNICATION

DATE: September 4, 2013	**AGENDA NO. VII,C,2,a**	**SUBJECT**: Resolution 17, 2013 amending Ordinance 12, 2012 for the 2013 budget
Department Head: Amanda Valdez		
City Manager: Heather Brooks		
PRESENTED BY: Amanda Valdez		

Recommendation
It is recommendation of staff to adopt Alternative 1, adopting the attached Resolution 17, 2013 amending the 2013 budget.

Background
Several changes have occurred since the adoption of the budget in October 2012. Staff periodically returns to council to address these types of items. The major items are detailed below:

Item	Amount	Note
General Fund	$109,800 (revenue) $79,000 (expenditures)	Revenues come from increase in revenue in the areas of permits, Construction use tax, Police seizures and special overtime and the revenues received for the airport for our fire department to offer personnel for airport standby needs. Expenses include the purchase of the Police Firearms range which is offset by a grant received from the training foundation.
Enterprise Fund	$23,000 (revenue) $3,140 (expenditure)	Increased revenues for water tap installation and expenses increase for hand holds to be installed for fiber project from City Hall to the Water Treatment plant.
Community Recreation Fund	$12,300 (revenue) $39,980 (expenditure)	Recognize increase revenues for programs in the areas of adult softball, swimming and volleyball, expenses include moving forward the upgrade to the library computer lab from the 2014 budget to current year, professional study of golf course HVAC system and fiber project installation of hand holds from Water treatment plant to Recreation Center.

Additionally, this resolution incorporates changes to reconcile estimates made at the time of budget to our fund balances to the actual fund balances as reflected in our recently concluded audit.

Issue Before the Council
Does the City Council wish adopt the attached resolution amending the budget?

Alternatives
1. Adopt the attached Resolution 17, 2013 amending the 2013 budget.

2. Decline to act at this time and give staff further direction.

Fiscal Impact
Impacts from these changes have been accounted for in the long range financial plans of the City. The changes within the general fund are within the council policy on long range planning and given today's information will not adversely impact the fund balance.

Legal Opinion
City Attorney will be present for any comments.

Conclusion
This change recognizes all new revenues to-date for the City, makes changes to reconcile estimates with actual fund balances, and allows the City to continue advancing on its projects.

Attachment

Resolution 17-2013

Resolution No. 17 - 2013

A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS AND AUTHORIZING EXPENDITURES IN EXCESS OF AMOUNTS BUDGETED FOR THE CITY OF ALAMOSA IN ORDINANCE 12, 2012 AND KNOWN AS 2nd BUDGET AMENDMENT.

WHEREAS, the City of Alamosa, Colorado, will receive grant funds to offset costs, or has sufficient fund balance for the expenditure:

WHEREAS, the City Manager recommends said monies be appropriated or reappropriated for use in the 2013 budget year:

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Alamosa, Colorado:

Section 1. There is hereby made a supplemental appropriation from the fund balance or a reappropriation of funds from one division to another, for expenditure in 2013. The following sums of money, or so much thereof as may be necessary, be and the same are hereby appropriated for expenditure by the City of Alamosa, Colorado, for the fiscal year beginning January 1, 2013, and ending December 31, 2013:

Fund	**Current Budget**	**Change**		**Amended Budget**	**Source/Note**	
	(Revenue)	Increase	(Decrease)			
General Fund	$ 7,278,595	$ 109,800	$ -	$ 7,388,395	$15,600 increase in Construction Use tax; $5,000 for General Permits; $7,200 for additional Special Police Overtime; $4,000 for Police Seizures; $8,000 increase for special fire service airport standby pass thru; $70,000 grant from training foundation for purchase of firearms range	
Total	**7,278,595**	**109,800**	**-**	**7,388,395**	**Net Increase**	**$ 109,800**

Fund	**Current Budget**	**Change**		**Amended Budget**	**Source/Note**	
	(Revenue)	Increase	(Decrease)			
Enterprise Fund	$ 3,730,400	$ 23,000	$ -	$ 3,753,400	$23,000 increase in revenue for tap fees	
Total	**3,730,400**	**23,000**	**-**	**3,753,400**	**Net Increase**	**$ 23,000**

Fund	**Current Budget**	**Change**		**Amended Budget**	**Source/Note**	
	(Revenue)	Increase	(Decrease)			
Community Recreation Fund	$ 1,365,330	$ 12,300	$ -	$ 1,377,630	$5,000 additional adult softball revenue; $5,000 Swimming program fees; $2,300 Volleyball program revenue	
Total	**1,365,330**	**12,300**	**-**	**1,377,630**	**Net Increase**	**$ 12,300**

Section 2. There is hereby made a supplemental appropriation from the above revenue sources or fund balance, for expenditure in 2012. The following sums of money, or so much thereof as may be necessary, be and the same are hereby appropriated for expenditure by the City of Alamosa, Colorado, for the fiscal year beginning January 1, 2013, and ending December 31, 2013:

General Fund

Division	Current Budget	Increase	(Decrease)	Amended Budget	Source Note	
02-13 Non-Departmental	$ 921,980	$ 71,000	$ -	$ 992,980	$71,000 for purchase of Firearms range for public safety training needs	
02-22 Fire Department	$ 277,900	$ 8,000	$ -	$ 285,900	$8,000 Increase to fire call time for airport standby's	
Totals	**1,199,880**	**79,000**	**-**	**1,278,880**	**Net Increase**	**$ 79,000**

Enterprise Fund

Division	Current Budget	Increase	(Decrease)	Amended Budget		
03-01 Water Department	$ 891,885	$ 3,140	$ -	$ 895,025	$3,140 for fiber project hand holds	
Total	**891,885**	**3,140**	**-**	**895,025**	**Net Increase**	**$ 3,140**

Community Recreation Fund

Division	Current Budget	Increase	(Decrease)	Amended Budget		
19-54 Library	$ 454,850	$ 25,000	$ -	$ 479,850	$25,000 for upgrade to library computer lab	
19-66 Community Recreation	$ 1,731,705	$ 14,980	$ -	$ 1,746,685	$5,100 for increase in cost to resurface tennis courts; $8,000 for HVAC system evaluation study; $1,880 for fiber project hand holds	
Total	**2,186,555**	**39,980**	**-**	**2,226,535**	**Net Increase**	**$ 39,980**

Section 3. There is hereby made an adjustment to the estimated fund balances to the actual audited fund balances available in 2013.

	Estimated Available Fund Balance*	Adjustment- Increase/(Decrease)	Revised Available Fund Balance
General Fund	$ 2,122,572	$ 1,023,726	$ 3,146,298.00
Enterprise Fund	$ 518,629	$ 286,212	$ 804,841.00
Capital Improvement Fund	$ 1,487,580	$ (103,584)	$ 1,383,996.00
Cemetery Endowment Fund	$ 10,927	$ 1,034	$ 11,961.00
Firemen's Pension Fund	$ 1,261,523	$ 174,987	$ 1,436,510.00
Conservation Trust Fund	$ 71,000	$ (25,936)	$ 45,064.00
ACLC Debt Service Fund	$ 498,111	$ (5,857)	$ 492,254.00
Employee Benefit Fund	$ 452,412	$ 214,151	$ 666,563.00
Community Recreation Fund	$ 405,042	$ 143,274	$ 548,316.00
Enterprise Debt Fund	$ 572,232	$ 1,605,508	$ 2,177,740.00
Police Grant Fund	$ -	$ 4,920	$ 4,920.00

* estimated at time of budget adoption

Section 4. The supplemental appropriations, adjustments, and transfers herein provided shall constitute the 2nd amendment to the

2013 budget and shall be effective immediately.

APPROVED, PASSED and ADOPTED on this the 4th day of September 2013.

CITY OF ALAMOSA

BY ______________________________
Kathleen J. Rogers

ATTEST:

____
Judy Egbert, City Clerk

COUNCIL COMMUNICATION

<table>
<tr><td>DATE: August 12, 2013</td><td>AGENDA NO. VII. C.7. b.</td><td rowspan="4">SUBJECT:

Resolution No. 18, 2013, A Resolution Adopting the Attached Policy Regarding Mayor Pro Tem Selection</td></tr>
<tr><td colspan="2">Department Head:
Judy A. Egbert, City Clerk</td></tr>
<tr><td colspan="2">City Manager:
Heather Brooks, City Manager</td></tr>
<tr><td colspan="2">
PRESENTED BY: Judy Egbert</td></tr>
</table>

Recommendation

Adopt this resolution if it meets Council's desire.

Background

The City's Charter specifies that a Mayor Pro Tem be chosen by Council. There is no guidance as to how to make the selection, when to make it, or the length of the term of this position.

Recent practice has been to elect a Mayor Pro Tem for a two year term at the first meeting in December following the City's November election. New Council members are sworn in at either the second meeting in November or the first meeting in December, depending on when the election is certified. Staff recommends that this practice be moved to January to allow newly-elected Councilors time to settle in prior to being asked to make this decision. This policy will formalize that practice with the change to January.

Issue Before the Council

Does Council wish to adopt this policy?

Alternatives

1. Adopt the resolution and policy as presented.
2. Adopt the resolution and policy with changes.
3. Do not adopt the resolution and further direct staff.

Fiscal Impact

Nons.

Legal Opinion

Counselor Schwiesow will be available at the meeting if needed.

Conclusion

Creating a policy will help to add clarity and structure to this process.

RESOLUTION NO. 18, 2013

A RESOLUTION ADOPTING THE ATTACHED POLICY ESTABLISHING SELECTION OF MAYOR PRO TEM

WHEREAS, the City's Charter calls for the Council to select one of its own as Mayor Pro Tem; and

WHEREAS, the Charter does not specify the details of how this selection is to be accomplished; and

WHEREAS, the City Council of the City of Alamosa, Colorado, desires to establish a clear policy on this selection process and to formalize historical practice;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALAMOSA, COLORADO:

That the attached policy be adopted and incorporated into a City Council Policy Manual

PASSED AND ADOPTED, SIGNED AND APPROVED, This 4th day of September, 2013.

ATTEST: CITY OF ALAMOSA, COLORADO

______________________________ By:______________________________

Judy A. Egbert, City Clerk Kathleen J. Rogers, Mayor

City of Alamosa City Council Policy

Policy Number	Subject Timing and term of Mayor Pro Tem selection	Effective Date	Page
			1 of __

Background

The City's Charter specifies that a Mayor Pro Tem be chosen by Council. There is no guidance as to how to make the selection, when to make it, or the length of the term of this position.

Recent practice has been to elect a Mayor Pro Tem for a two year term at the first meeting in December following the City's November election. New Council members are sworn in at either the second meeting in November or the first meeting in December, depending on when the election is certified. Staff recommends that this practice be moved to January to allow newly-elected Councilors time to settle in prior to being asked to make this decision. This policy will formalize that practice with the change to January.

Purpose of Policy

This policy will specify how to carry out the Charter's directive regarding Mayor Pro Tem selection.

Policy

The Mayor Pro Tem shall be chosen as follows:

- One of the Council members will be chosen as Mayor Pro Tem at the first meeting in December of odd-numbered years.
- Selection will be made by ballot in the same manner as other ballots are conducted.
- Final action will be by motion.
- The Mayor Pro Tem term will be for two years.
- If the Mayor Pro Tem resigns this title or leaves the position of Councilor prior to the end of the term, another Council will be selected in the same manner to complete the term.

DATE: August 26, 2013	AGENDA NO.	SUBJECT: IRS audit of employee classifications
Department Head: Erich Schwiesow		
City Manager: Heather Brooks		
PRESENTED BY: Erich Schwiesow		

Recommendation:

Go into executive session pursuant to C.R.S. § 24-6-402(4)(b) to discuss with the City Attorney and special counsel the legal background and pros and cons of acceptance of proposed closing agreements for each position subject to reclassification, being the City Attorney, City Prosecutor, Municipal Judge, and Recreation Center Instructors.

Background:

The IRS has conducted an audit of the 2010 tax year with respect to how the City treats four of its positions currently held as independent contractors. The positions are City Attorney, City Prosecutor, Municipal Judge, and Recreation Center Instructors. The IRS has examined the roles and duties of the four positions with respect to its criteria for whether such positions are classified as employees or independent contractors for employment tax purposes. The positions of City Prosecutor and Rec Center instructors have always been treated as independent contractors. The position of City Attorney was treated as an employee up until 2007, when Erich Schwiesow became City Attorney, and the position of Municipal Judge was treated as an employee until 2010, when Dan Powell became Municipal Judge. Both changes were in response to requests for proposals where the City entertained proposals both to serve as employees and to serve as independent contractors. The City determined that independent contractor arrangements better suited its needs. Such arrangements are common in smaller communities throughout Colorado for each of the four positions.

The IRS takes the position that the four positions should be employees, and bases that conclusion on differing factors. Copies of the position statements of the IRS for each of the employees, and of the IRS's proposed resolution are attached. In short, the IRS is willing to settle the issue by allowing the City to pay back withholding and interest on payroll taxes for 2010, the year of the subject audit, and forego any further audit of 2011, 2012, and 2013, on condition that the City agree that it will not appeal the determination that the positions should be classified as employees, and will reclassify the positions as employees as of January 1, 2014. This offer may be accepted piecemeal, ie for some positions and not others. If accepted piecemeal, however, the City would still be subject to audit for the intervening years on other issues that were not settled.

There are various factors to consider when considering the IRS settlement proposal, such as the varying legal concepts applicable and the strength of the arguments on each side, as well as the practical consequences of reclassification, including the necessity to re-negotiate each employment contract, and the expenses of carrying what have been independent contractors as employees when considering health insurance, retirement, and other employee benefits.

Issue Before the Council:

Does Council wish to accept the IRS's proposed closing agreement for one or more of the four positions currently subject of the IRS audit.

Alternatives:

Alternative 1: Accept the closing agreement for all four positions.

Alternative 2: Accept the closing agreement for one or more of the positions, and appeal the other positions to the IRS and, if unsuccessful there, to the tax court.

Alternative 3: Accept none of the proposals, and appeal all determinations.

Alternative 4: Decline to act at the present time, and give staff further direction.

Fiscal Impact:

The total of payroll taxes to be paid for 2010 under the proposed settlement agreement amounts to approximately $15,300. With interest, that would amount to somewhere in the range of $18,000. Appealing the decision would likely cost somewhere within that same range.

Legal Opinion:

The City Attorney will be present for any comments, and the City's special counsel Kevin Paul and or Martha Tierney will be available during the executive session.

Conclusion:

The proposed resolution offers both advantages and drawbacks that need to be further explored in executive session before Council can make a decision. Council may be able to make a decision at its meeting, after coming out of executive session, or may determine that it needs more information.

FAX

Department of the Treasury
Internal Revenue Service

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Date *August 15, 2013*

Number of pages including cover sheet **10**

TO: Kevin Paul
City of Alamosa

Phone (303) 376-3714
Fax Phone **(303) 595-4750**
CC:

FROM: Charles Sandoval
600 17 St. Suite 450 S
Denver CO 80202

Phone (720) 956-4407
Fax Phone (855) 243-4021

REMARKS: ☒ *Urgent* ☐ *For your review* ☐ *Reply ASAP* ☐ *Please Comment*

Please acknowledge receipt.

I forgot to send this fax covering the Prosecuting Attorney. Call me if you have any questions.

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
Name of Taxpayer City of Alamosa		Year(s) 2010

ISSUE: Reclassification of Prosecuting Attorney

According to the information we received,

The City and the Current Prosecuting Attorney determined that to enable the Prosecuting Attorney to perform services for the City and for other clients, and to avoid any real or perceived issues of conflict that might arise if the Prosecuting Attorney was treated as a City employee, it was determined to change the position to an independent contractor status.

The Council shall appoint a Prosecuting Attorney who shall serve at the pleasure of the Council. He shall have been a duly licensed attorney in the State of Colorado for at least three years immediately prior to his appointment and shall have been actively engaged in the practice of law in the city during such three years. The Council shall fix the compensation of the Prosecuting Attorney.

The city employs the Prosecuting Attorney to represent the City as the City Prosecutor. The nature of the duties of City Prosecutor to the following as requested by the City Staff: representing the City's interest in all aspects of the municipal court, appeals of Municipal court rulings in District Court, liquor license hearings, and other duties as requested by the City staff.

Before entering upon the duties of his office, each Councilman, the Mayor, the City Manager, the City Attorney, the City Clerk, the Judge of the Municipal Court and each Director of a Department shall take, subscribe and file with the City Clerk an oath or affirmation that he will faithfully perform the duties of the office or position. The City Clerk shall take and subscribe his oath before a notary public.

LAW: Section 3402(a) of the Internal Revenue Code (the Code) provides that every employer making payment of wages shall deduct and withhold federal income taxes.

Code section 3401(c) provides that, for purposes of this chapter, the term "employee" includes an officer, employee, or elected official of a state, or any political subdivision thereof. For this purpose, the regulations include both elected and appointed officials in the definition of "employee." Section 31.3401(c)-1(a), Employment Tax Regulations. The chapter referred to is Chapter 24, Collection of Income Tax at Source on Wages. In other words, section 3401(c) applies only for income tax withholding purposes. For purposes of FICA taxes, employee status is determined under the common law. Code section 3121(d)(2).

The Code does not define the term "public official," but section 1.1402(c)-2(b) of the Income Tax Regulations gives the following examples: the president, the vice president, a governor, a mayor, the secretary of state, a member of Congress, a state representative, a county commissioner, a judge, a

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
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justice of the peace, a county or **city attorney**, a marshal, a sheriff, a constable, a registrar of deeds, or a notary public.

Taxes under the Self-Employment Contributions Act (SECA) are imposed pursuant to sections 1401 and 1402 on the gross income, less applicable deductions, derived by an individual from any trade or business. For SECA purposes, the term "trade or business" has the same meaning as when used in Code section 162, relating to trade or business expenses.

Section 1402(c)(1) provides that the performance of the functions of a public office is not a trade or business for SECA purposes. Code section 1402(c)(1) and section 1.1402(c)-2(a)(2)(B).

The State of Colorado Revised Statutes sets the requirements for the appointment of the Prosecuting Attorney and the requirements to take an oath of office.

For FICA purposes, an individual is an employee if, under the common law rules, the relationship between the individual and the person for whom he or she performs services is the legal relationship of employer and employee. Generally this relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which the result is accomplished. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. Section 31.3121(d)-1(c), Employment Tax Regulations.

In applying the common-law rules, the IRS considers whether the service recipient has behavioral and financial control over the worker and evaluates the relationship between the parties, including how they view their relationship.

Behavioral controls are evidenced by facts which indicate whether the service recipient has a right to direct or control how the worker performs the tasks for which he or she is hired. Facts which illustrate the right to control how a worker performs a task include the provision of training or instruction.

Financial controls are evidenced by facts which indicate whether the service recipient has a right to direct or control the financial aspects of the worker's activities. These include significant investment, unreimbursed expenses, making services available to the relevant market, the method of payment, and the opportunity for profit or loss.

The relationship of the parties is generally evidenced by examining the parties' agreements and actions with respect to each other, paying close attention to those facts which show not only how they perceive their own relationship but also how they represent their relationship to others. Facts which illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of, employee benefits; the right of the parties to terminate

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
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the relationship; the permanency of the relationship, and whether the services performed are part of the service recipient's regular business activities.

The fact that an individual is employed part-time, or works for more than one employer, is not evidence of independent contractor status. A part-time worker may be an employee under the common-law rules.

While the Code does not define the term "public official," there is a body of case law defining the term. In Buckley v. Valeo, 424 U.S.1 (1975), the Supreme Court stated that anyone who exercises significant authority pursuant to the laws of the United States is an officer. The term "officers" embraces all appointed officials exercising responsibility under the public laws of the nation. Officers perform a significant governmental duty exercised pursuant to a public law. Officers administer and enforce the public law.

Metcalf & Eddy v. Mitchel, 269 U.S. 514 (1926), specifically defines the term "officer." There the Supreme Court considered whether consulting engineers hired by states, municipalities, water supply and sewage districts were independent contractors or "officers and employees" of a state. The Court stated: "An office is a public station conferred by the appointment of a government. The term embraces the idea of tenure, duration, emolument and duties fixed by law. Where an office is created, the law usually fixes its incidents, including its term, its duties, and its compensation." Officers and employees are agents of a state to administer its laws. The independent contractor has liberty of action which excludes control or the right to control characteristic of the employer-employee relationship.

In Pope v. Commissioner, 138 F.2d 1006 (6th Cir. 1943), the Sixth Circuit, following Metcalf & Eddy, established the following standards to define the term "public office." (1) It must be created by the constitution or the legislature or by a municipality or other body with authority conferred by the legislature. (2) There must be a delegation of a portion of the sovereign powers of government to be exercised for the benefit of the public. (3) The powers conferred and the duties to be discharged must be defined either directly or indirectly by the legislature or through legislative authority. (4) The duties must be performed independently and without control of a superior power other than the law. (5) The office must have some permanency and continuity, and the officer must take an official oath.

Internal Revenue Code Section 3403 states that the employer shall be liable for the payment of the tax required to be deducted and withheld.

Regulations 31.3403-1 States that the employer is liable for this tax whether or not it is collected from the employee by the employer.

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GOVERNMENT'S POSITION:

The position taken is that any individual who serves as "public officer" or "public official" is an employee of the governmental entity being served for federal income tax withholding purposes. Therefore the City would be responsible for withholding and paying federal income taxes. Although there is no precise definition in the Internal Revenue Code or Regulations for these terms, case law has generally indicated that if a provision in a public law authorizes the employment of an individual, the individual hired under that provision is considered an employee (see Law section above for discussion of the court cases).

The facts indicating that the Prosecuting Attorney position is a "public office" include:

- The office is created by a constitution, charter, or other similar document.
- The office is delegated a portion of powers of the government entity
- The powers conferred or the duties to be discharged are defined by the document creating the position or by subsequent legislation.
- The office has some permanency and continuity, and the officer takes an official oath.

The Prosecuting Attorney is appointed to the position and manages the legal affairs for the City. Certain responsibilities with respect to legal issues are delegated to the Prosecuting Attorney under their signed agreement. The Prosecuting Attorney does take an official oath of office. The office has had permanency and continuity, and the Prosecuting Attorney Position was held by an employee prior to 2007.

Based upon the findings, the Prosecuting Attorney is a public official within the meaning of section 3401(c) for income tax withholding purposes. The Internal Revenue Service has determined that the office of Prosecuting Attorney, through its creation under State statute, fits within all of the factors listed above defining "public office", "public officer", or "public official". The Prosecuting Attorney administers and enforces the public laws for the City (Buckley v. Valeo). The Prosecuting Attorney position fulfills the conditions for public office enumerated in Pope v. Commissioner. The City has provided no case law, facts, etc. to refute the findings that the Prosecuting Attorney position is not within the "public official" definition.

Even though Private Letters Rulings (PLR) cannot be used or cited as precedent (per Section 6110(j)(3)) they do address the law and the direction the IRS has taken with regard to a position.

In PLR 200146006, the determination was made that a Deputy Tax Collector was an employee for FICA purposes. There were many correlations between the tax collector, a "public official" and the Prosecuting Attorney. They make reference to the following:

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"In the case of a public official, many of the statutory provisions which established the status as an official are also relevant to the determination of whether the worker is an employee. These provisions provide facts tending to show that the Town and the Tax Collector have a right to control the way in which the worker performs his duties under the law, i.e., that the worker does not operate with the freedom from control characteristics of an independent contractor." This holds true for the Prosecuting Attorney, who is by statute, a "public official" and has many statutory provisions as outlined above.

Provision of training and instruction is one type of behavioral control. While the Town does not provide instruction to the worker, it has the right to require him to change his methods if they do not conform to legal requirements. The duties of the office of Deputy Tax Collector are established by statute, and the required procedures are set forth in the Collector's Manual. If the Deputy does not conform to required procedures, the Town has the right to require him to change his procedures or to terminate his appointment.

The same holds true for the Prosecuting Attorney. The statute and position description outlines the duties of the office. If the Prosecuting Attorney does not conform to the requirements of the contract they can terminate his appointment.

The Deputy Tax Collector operates with a certain amount of independence, but is constrained by the power of the law and the authority of the Town, exercised by the Tax Collector. This is one of the characteristics of an officer in Pope v. Commissioner, as well as an indication of the control typical of employee status. The Prosecuting Attorney is constrained by the power of the law per Colorado State Statute and the authority of the City.

The Worker represents himself to the public as an agent of the Town. Though the Worker pays for the forms issued by his office, the requirements of these forms are statutorily established. The forms bear the heading Town of _____, State. The envelopes the Worker uses contain the notice: Official Business, Penalty for Private Use. The same holds true for the Prosecuting Attorney. The Prosecuting Attorney represents himself to the general public as the City prosecuting attorney.

In the PLR they conclude the evidence establishes the Town has the right to exercise enough behavioral control over the Worker to create an employer-employee relationship. Since the same types of behavioral controls exist with the City and the Prosecuting Attorney, then the determination would be an employer-employee relationship exists as well.

In the fact pattern in the PLR, the Worker has a considerable amount of financial independence. He maintains an office and has expenses for equipment and employees. He has a genuine risk of profit or loss different from that of a salaried employee. He does not work exclusively for the Town, but has a number of client towns. This holds true for the Prosecuting Attorney. The Prosecuting Attorney has his own office, employees etc. also. On the other hand, he does not have absolute financial independence. His financial arrangements, including records, bank accounts, and reporting, are largely dictated by

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State statute. Payments to the deputy are limited to penalties and charges for the various notices he serves. He cannot negotiate for himself a payment schedule different from that provided by State statute. He cannot compromise a tax liability, except as permitted by statute. Thus, while he bears a risk of profit or loss, he does not have the full measure of financial independence characteristic of an independent contractor.

This holds true for the Prosecuting Attorney. As outlined in his contract the Prosecuting Attorney has his own office, employees etc. The differences are that the Prosecuting Attorney can work for other clients. The Prosecuting Attorney's financial arrangement is not dictated by State statute, but by a budget he submits annually (much the same as the other departments within the city). Therefore the Prosecuting Attorney can increase his budget each year to cover his expenses –further reducing his risk of loss.

The evidence concerning the relationship between the Deputy Tax Collector and the Town also contained indicia of both employee and independent contractor status. The parties apparently see their relationship as one of service recipient and independent contractor. The Town reports its payments to the Worker on Form 1099. The Worker does not receive employee benefits or reimbursement for business expenses. On the other hand, the Worker's contract, a yearly Certificate of Appointment as Deputy Collector of Taxes, suggests that he holds an appointed public office and is an employee. Again, the fact pattern is much the same with the City and the Prosecuting Attorney. They handled the relationship as that of an independent contractor and issued a Form 1099. The Prosecuting Attorney does not receive any employee benefits. The contract between the City and the Prosecuting Attorney was through a resolution by the City Council –which allowed the contract to be automatically renewed for successive one year terms upon the same conditions. This has been the case involving the current Prosecuting Attorney. Each year he continues to hold himself to the public as the "Prosecuting Attorney". He is present at the board meetings, addresses the legality of all ordinances and resolutions brought to council on behalf of the City and Council, and takes care of all legal matters involving city personnel.

The determination made in the PLR was, "While the relationship between the Town and the Worker has certain indicia of independent contractor status, we conclude that there is sufficient evidence of control and the right to control to establish an employer-employee relationship. In this decision, we gave great weight to the Supreme Court and appellate cases defining the term "public official" and holding public officials to be employees. Therefore the Town and the Worker are subject to FICA tax on the Worker's compensation." If the same weight is given to the Prosecuting Attorney—who is without a doubt a "public official", then he and his staff must be employees subject to FICA tax as well.

The examiner has found through PLR's 9351015 and 9425040 that municipal judges—who are appointed officials were determined to be employees when addressing the same types of common law rules for FICA purposes and if they are appointed "public officials" for federal income tax withholding.

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Name of Taxpayer City of Alamosa		Year(s) 2010

Based upon the above facts, an adjustment was made to reclassify the amount paid to the Prosecuting Attorney as wages for federal income tax purposes under section 3401.

DRAFT PROSECUTING ATTORNEY

Form **4666**
(Rev. March 2011)

Department of the Treasury - Internal Revenue Service

Summary of Employment Tax Examination

Name and Address of Employer
City of Alamosa
0
0

Employer Identification Number
00-0000000

Date of Report

Type of Report

Delinquent Tax (Return not filed)

Increase (Decrease) in Tax (Return filed)

Agreed (This report is subject to review and you will be notified by the Director when it is accepted.)

Unagreed

Following is a summary of the results of my examination of your returns as shown on the attached pages of this report.

Tax, Credits and Penalties

a	b	c	d	e		f	g
Calendar Year	Return Form Number	Delinquent Tax, Increase (Decrease) in Tax	Increase (Decrease) in Allowed Credits	Penalty Code Section	Penalty Amount	Total Adjustment and Penalties (c+d+e)	Page number of Report
2010	**941**	**2,233.96**	-			**2,233.96**	
Total		**2,233.96**				**2,233.96**	

Other Information

No scenario selected.

This does not constitute an income tax examination.

Form 2504-WC IRC section 7436 issues

Examining Officer's Signature

Examining Officer's ID #

Area

DRAFT PROSECUTING ATTORNEY

Employment Tax Examination Changes Report

Name of Employer	Employer Identification number	Calendar year
City of Alamosa		2010

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.4%	-	-	-	-
	073	2.90%	-	-	-	-
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079	7.44%	5,229.25	5,229.25	5,229.25	5,229.25
		1.74%	5,229.25	5,229.25	5,229.25	5,229.25
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079	8.68%	-	-	-	-
		2.03%	-	-	-	-
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	006	6.20%				
	073	1.45%				
5. Other adjustments to Social Security and Medicare wages						
6. Other adjustments to Social Security and Medicare wages						
7. Total social security and Medicare tax (lines 1, 2, 3, 4, 5 x rates) plus/minus Line 6	112		$ 480.05	$ 480.05	$ 480.05	$ 480.05
8. Social Security and Medicare tax adjustment under 3121(q)	114					
9. Increase (decrease) in exempt wages/tips paid to qualified employees under IRC 3111(d)	115					
10. Increase (decrease) in tax exemption on wages/tips on Line 9 (Line 9 x rate)	116					
11. Income withholding wage adjustment subject to tax under section 3402		25.00%	-	-	-	-
12. Income tax withholding wage adjustment subject to rates under IRC 3509(a)	079	1.50%	5,229.25	5,229.25	5,229.25	5,229.25
13. Income tax withholding wage adjustment subject to rates under IRC 3509(b)	079	3.00%	-	-	-	-
14. Other income tax withholding wage adjustment						
15. Actual Income tax withheld but not previously reported						
16. Other adjustment to income withholding						
17. Total income tax (Lines 11, 12, 13, 14 x rates plus Line 15 plus/minus Line 16)	111		$ 78.44	$ 78.44	$ 78.44	$ 78.44
18. Increase (decrease) in COBRA premium assistance payments under IRC 6432	229					
19. Increase (decrease) in Advance Earned Income Credit under IRC 3507	114					
20. Increase (decrease) in exempt wages/tips paid to qualified employees March 19-31, 2010 under IRC 3111(d)(5)	117					
21. Increase (decrease) in credit for exempt wages/tips on Line 20 (Line 20 x rate)	296					
22. Increase (decrease) in other credits						
23. Net increase (decrease) in credits (sum of Lines 18, 19, 21, and 22)			$ -	$ -	$ -	$ -

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
Name of Taxpayer City of Alamosa		Year(s) 2010

ISSUE: Reclassification of City Attorney

According to the information we received,

Prior to 2007, the City Attorney Position was treated as an employee. The City and the Current City Attorney determined that to enable the City Attorney to perform services for the City and for other clients, and to avoid any real or perceived issues of conflict that might arise if the City Attorney was treated as a City employee, it was determined to change the position to an independent contractor status.

The Council shall appoint a city attorney who shall serve at the pleasure of the Council. He shall have been a duly licensed attorney in the State of Colorado for at least three years immediately prior to his appointment and shall have been actively engaged in the practice of law in the city during such three years. The Council shall fix the compensation of the city attorney.

The City Attorney shall be the legal advisor of the Council, the mayor, the city manager and any other officers of the city, and shall represent the city in all city legal proceedings. He shall draw all ordinances and other required legal documents and shall perform all such other services as may be required by this Charter, city ordinances or the Council.

Before entering upon the duties of his office, each Councilman, the Mayor, the City Manager, the City Attorney, the City Clerk, the Judge of the Municipal Court and each Director of a Department shall take, subscribe and file with the City Clerk an oath or affirmation that he will faithfully perform the duties of the office or position. The City Clerk shall take and subscribe his oath before a notary public.

LAW: Section 3402(a) of the Internal Revenue Code (the Code) provides that every employer making payment of wages shall deduct and withhold federal income taxes.

Code section 3401(c) provides that, for purposes of this chapter, the term "employee" includes an officer, employee, or elected official of a state, or any political subdivision thereof. For this purpose, the regulations include both elected and appointed officials in the definition of "employee." Section 31.3401(c)-1(a), Employment Tax Regulations. The chapter referred to is Chapter 24, Collection of Income Tax at Source on Wages. In other words, section 3401(c) applies only for income tax withholding purposes. For purposes of FICA taxes, employee status is determined under the common law. Code section 3121(d)(2).

The Code does not define the term "public official," but section 1.1402(c)-2(b) of the Income Tax Regulations gives the following examples: the president, the vice president, a governor, a mayor, the

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
Name of Taxpayer City of Alamosa		Year(s) 2010

secretary of state, a member of Congress, a state representative, a county commissioner, a judge, a justice of the peace, a county or **city attorney**, a marshal, a sheriff, a constable, a registrar of deeds, or a notary public.

Taxes under the Self-Employment Contributions Act (SECA) are imposed pursuant to sections 1401 and 1402 on the gross income, less applicable deductions, derived by an individual from any trade or business. For SECA purposes, the term "trade or business" has the same meaning as when used in Code section 162, relating to trade or business expenses.

Section 1402(c)(1) provides that the performance of the functions of a public office is not a trade or business for SECA purposes. Code section 1402(c)(1) and section 1.1402(c)-2(a)(2)(B).

The State of Colorado Revised Statutes sets the requirements for the appointment of the City Attorney and the requirements to take an oath of office.

For FICA purposes, an individual is an employee if, under the common law rules, the relationship between the individual and the person for whom he or she performs services is the legal relationship of employer and employee. Generally this relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which the result is accomplished. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. Section 31.3121(d)-1(c), Employment Tax Regulations.

In applying the common-law rules, the IRS considers whether the service recipient has behavioral and financial control over the worker and evaluates the relationship between the parties, including how they view their relationship.

Behavioral controls are evidenced by facts which indicate whether the service recipient has a right to direct or control how the worker performs the tasks for which he or she is hired. Facts which illustrate the right to control how a worker performs a task include the provision of training or instruction.

Financial controls are evidenced by facts which indicate whether the service recipient has a right to direct or control the financial aspects of the worker's activities. These include significant investment, unreimbursed expenses, making services available to the relevant market, the method of payment, and the opportunity for profit or loss.

The relationship of the parties is generally evidenced by examining the parties' agreements and actions with respect to each other, paying close attention to those facts which show not only how they perceive their own relationship but also how they represent their relationship to others. Facts which illustrate how the parties perceive their relationship include the intent of the parties as expressed in

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
Name of Taxpayer City of Alamosa		Year(s) 2010

written contracts; the provision of, or lack of, employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship, and whether the services performed are part of the service recipient's regular business activities.

The fact that an individual is employed part-time, or works for more than one employer, is not evidence of independent contractor status. A part-time worker may be an employee under the common-law rules.

While the Code does not define the term "public official," there is a body of case law defining the term. In Buckley v. Valeo, 424 U.S.1 (1975), the Supreme Court stated that anyone who exercises significant authority pursuant to the laws of the United States is an officer. The term "officers" embraces all appointed officials exercising responsibility under the public laws of the nation. Officers perform a significant governmental duty exercised pursuant to a public law. Officers administer and enforce the public law.

Metcalf & Eddy v. Mitchel, 269 U.S. 514 (1926), specifically defines the term "officer." There the Supreme Court considered whether consulting engineers hired by states, municipalities, water supply and sewage districts were independent contractors or "officers and employees" of a state. The Court stated: "An office is a public station conferred by the appointment of a government. The term embraces the idea of tenure, duration, emolument and duties fixed by law. Where an office is created, the law usually fixes its incidents, including its term, its duties, and its compensation." Officers and employees are agents of a state to administer its laws. The independent contractor has liberty of action which excludes control or the right to control characteristic of the employer-employee relationship.

In Pope v. Commissioner, 138 F.2d 1006 (6th Cir. 1943), the Sixth Circuit, following Metcalf & Eddy, established the following standards to define the term "public office." (1) It must be created by the constitution or the legislature or by a municipality or other body with authority conferred by the legislature. (2) There must be a delegation of a portion of the sovereign powers of government to be exercised for the benefit of the public. (3) The powers conferred and the duties to be discharged must be defined either directly or indirectly by the legislature or through legislative authority. (4) The duties must be performed independently and without control of a superior power other than the law. (5) The office must have some permanency and continuity, and the officer must take an official oath.

Internal Revenue Code Section 3403 states that the employer shall be liable for the payment of the tax required to be deducted and withheld.

Regulations 31.3403-1 States that the employer is liable for this tax whether or not it is collected from the employee by the employer.

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Name of Taxpayer City of Alamosa		Year(s) 2010

GOVERNMENT'S POSITION:

The position taken is that any individual who serves as "public officer" or "public official" is an employee of the governmental entity being served for federal income tax withholding purposes. Therefore the City would be responsible for withholding and paying federal income taxes. Although there is no precise definition in the Internal Revenue Code or Regulations for these terms, case law has generally indicated that if a provision in a public law authorizes the employment of an individual, the individual hired under that provision is considered an employee (see Law section above for discussion of the court cases).

The facts indicating that the city attorney position is a "public office" include:

- The office is created by a constitution, charter, or other similar document.
- The office is delegated a portion of powers of the government entity
- The powers conferred or the duties to be discharged are defined by the document creating the position or by subsequent legislation.
- The office has some permanency and continuity, and the officer takes an official oath.

The City Attorney is appointed to the position and manages the legal affairs for the City. Certain responsibilities with respect to legal issues are delegated to the City Attorney under their signed agreement. The City Attorney does take an official oath of office. The office has had permanency and continuity, and the City Attorney Position was held by an employee prior to 2007.

Based upon the findings, the City Attorney is a public official within the meaning of section 3401(c) for income tax withholding purposes. The Internal Revenue Service has determined that the office of City Attorney, through its creation under State statute, fits within all of the factors listed above defining "public office", "public officer", or "public official". The City Attorney administers and enforces the public laws for the City (Buckley v. Valeo). The City Attorney position fulfills the conditions for public office enumerated in Pope v. Commissioner. The City has provided no case law, facts, etc. to refute the findings that the city attorney position is not within the "public official" definition.

Even though Private Letters Rulings (PLR) cannot be used or cited as precedent (per Section 6110(j)(3)) they do address the law and the direction the IRS has taken with regard to a position.

In PLR 200146006, the determination was made that a Deputy Tax Collector was an employee for FICA purposes. There were many correlations between the tax collector, a "public official" and the city attorney. They make reference to the following:

"In the case of a public official, many of the statutory provisions which established the status as an official are also relevant to the determination of whether the worker is an employee. These provisions

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Name of Taxpayer City of Alamosa		Year(s) 2010

provide facts tending to show that the Town and the Tax Collector have a right to control the way in which the worker performs his duties under the law, i.e., that the worker does not operate with the freedom from control characteristics of an independent contractor." This holds true for the City Attorney, who is by statute, a "public official" and has many statutory provisions as outlined above.

Provision of training and instruction is one type of behavioral control. While the Town does not provide instruction to the worker, it has the right to require him to change his methods if they do not conform to legal requirements. The duties of the office of Deputy Tax Collector are established by statute, and the required procedures are set forth in the Collector's Manual. If the Deputy does not conform to required procedures, the Town has the right to require him to change his procedures or to terminate his appointment.

The same holds true for the City Attorney. The statute and position description outlines the duties of the office. If the City Attorney does not conform to the requirements of the contract they can terminate his appointment.

The Deputy Tax Collector operates with a certain amount of independence, but is constrained by the power of the law and the authority of the Town, exercised by the Tax Collector. This is one of the characteristics of an officer in Pope v. Commissioner, as well as an indication of the control typical of employee status. The City Attorney is constrained by the power of the law per Colorado State Statute and the authority of the City.

The Worker represents himself to the public as an agent of the Town. Though the Worker pays for the forms issued by his office, the requirements of these forms are statutorily established. The forms bear the heading Town of _____, State. The envelopes the Worker uses contain the notice: Official Business, Penalty for Private Use. The same holds true for the City Attorney. The City Attorney represents himself to the general public as the City prosecuting attorney.

In the PLR they conclude the evidence establishes the Town has the right to exercise enough behavioral control over the Worker to create an employer-employee relationship. Since the same types of behavioral controls exist with the City and the City Attorney, then the determination would be an employer-employee relationship exists as well.

In the fact pattern in the PLR, the Worker has a considerable amount of financial independence. He maintains an office and has expenses for equipment and employees. He has a genuine risk of profit or loss different from that of a salaried employee. He does not work exclusively for the Town, but has a number of client towns. This holds true for the City Attorney. The City Attorney has his own office, employees etc. also. On the other hand, he does not have absolute financial independence. His financial arrangements, including records, bank accounts, and reporting, are largely dictated by State statute. Payments to the deputy are limited to penalties and charges for the various notices he serves. He cannot negotiate for himself a payment schedule different from that provided by State statute. He

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - City Attorney
Name of Taxpayer City of Alamosa		Year(s) 2010

cannot compromise a tax liability, except as permitted by statute. Thus, while he bears a risk of profit or loss, he does not have the full measure of financial independence characteristic of an independent contractor.

This holds true for the City Attorney. As outlined in his contract the City Attorney has his own office, employees etc. The differences are that the City Attorney can work for other clients. The City Attorney's financial arrangement is not dictated by State statute, but by a budget he submits annually (much the same as the other departments within the city). Therefore the City Attorney can increase his budget each year to cover his expenses –further reducing his risk of loss.

The evidence concerning the relationship between the Deputy Tax Collector and the Town also contained indicia of both employee and independent contractor status. The parties apparently see their relationship as one of service recipient and independent contractor. The Town reports its payments to the Worker on Form 1099. The Worker does not receive employee benefits or reimbursement for business expenses. On the other hand, the Worker's contract, a yearly Certificate of Appointment as Deputy Collector of Taxes, suggests that he holds an appointed public office and is an employee. Again, the fact pattern is much the same with the City and the City Attorney. They handled the relationship as that of an independent contractor and issued a Form 1099. The City Attorney does not receive any employee benefits. The contract between the City and the City Attorney was through a resolution by the City Council –which allowed the contract to be automatically renewed for successive one year terms upon the same conditions. This has been the case involving the current City attorney. Each year he continues to hold himself to the public as the "City Attorney". He is present at the board meetings, addresses the legality of all ordinances and resolutions brought to council on behalf of the City and Council, and takes care of all legal matters involving city personnel.

The determination made in the PLR was, "While the relationship between the Town and the Worker has certain indicia of independent contractor status, we conclude that there is sufficient evidence of control and the right to control to establish an employer-employee relationship. In this decision, we gave great weight to the Supreme Court and appellate cases defining the term "public official" and holding public officials to be employees. Therefore the Town and the Worker are subject to FICA tax on the Worker's compensation." If the same weight is given to the City Attorney—who is without a doubt a "public official", then he and his staff must be employees subject to FICA tax as well.

The examiner has found through PLR's 9351015 and 9425040 that municipal judges—who are appointed officials were determined to be employees when addressing the same types of common law rules for FICA purposes and if they are appointed "public officials" for federal income tax withholding.

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Name of Taxpayer City of Alamosa		Year(s) 2010

Based upon the above facts, an adjustment was made to reclassify the amount paid to the City attorney as wages for federal income tax purposes under section 3401.

Draft - City Attorney

Form **4666** (Rev. March 2011)

Department of the Treasury - Internal Revenue Service

Summary of Employment Tax Examination

Name and Address of Employer	Employer Identification Number	Date of Report
City of Alamosa 0 0	00-0000000	

Type of Report

- [ ] *Delinquent Tax (Return not filed)*
- [ ] Increase (Decrease) in Tax (Return filed)
- [ ] Agreed (This report is subject to review and you will be notified by the Director when it is accepted)
- [ ] Unagreed

Following is a summary of the results of my examination of your returns as shown on the attached pages of this report

Tax, Credits and Penalties

a	b	c	d	e		f	g
				Penalty			
Calendar Year	Return Form Number	Delinquent Tax, Increase (Decrease) in Tax	Increase (Decrease) in Allowed Credits	Code Section	Amount	Total Adjustment and Penalties (c+d+e)	Page number of Report
2010	**0**	**7,048.80**	**-**			**7,048.80**	
Total		**7,048.80**				**7,048.80**	

Other Information

No scenario selected.

This does not constitute an income tax examination.

Form 2504-WC IRC section 7436 issues

Examining Officer's Signature	Examining Officer's ID #	Area

Draft - City Attorney

Employment Tax Examination Changes Report

Name of Employer	Employer identification number	Calendar year
City of Alamosa		2010

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.4%	-	-	-	-
	073	2.90%	-	-	-	-
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079	7.44%	16,500.00	16,500.00	16,500.00	16,500.00
		1.74%	16,500.00	16,500.00	16,500.00	16,500.00
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079	8.68%	-	-	-	-
		2.03%	-	-	-	-
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005	6.20%				
	073	1.45%				
5. Other adjustments to Social Security and Medicare wages						
6. Other adjustments to Social Security and Medicare wages						
7. Total social security and Medicare tax (lines 1, 2, 3, 4, 5 x rates) plus/minus Line 6	112		$ 1,514.70	$ 1,514.70	$ 1,514.70	$ 1,514.70
8. Social Security and Medicare tax adjustment under 3121(q)	114					
9. Increase (decrease) in exempt wages/tips paid to qualified employees under IRC 3111(d)	115					
10. Increase (decrease) in tax exemption on wages/tips on Line 9 (Line 9 x rate)	116					
11. Income withholding wage adjustment subject to tax under section 3402		25.00%	-	-	-	-
12. Income tax withholding wage adjustment subject to rates under IRC 3509(a)	079	1.50%	16,500.00	16,500.00	16,500.00	16,500.00
13. Income tax withholding wage adjustment subject to rates under IRC 3509(b)	079	3.00%	-	-	-	-
14. Other income tax withholding wage adjustment						
15. Actual income tax withheld but not previously reported						
16. Other adjustment to income withholding						
17. Total income tax (Lines 11, 12, 13, 14 x rates plus Line 15 plus/minus Line 16)	111		$ 247.50	$ 247.50	$ 247.50	$ 247.50
18. Increase (decrease) in COBRA premium assistance payments under IRC 6432	229					
19. Increase (decrease) in Advance Earned Income Credit under IRC 3507	114					
20. Increase (decrease) in exempt wages/tips paid to qualified employees March 19-31, 2010 under IRC 3111(d)(5)	117					
21. Increase (decrease) in credit for exempt wages/tips on Line 20 (Line 20 x rate)	296					
22. Increase (decrease) in other credits						
23. Net increase (decrease) in credits (sum of Lines 18, 19, 21, and 22)			$ -	$ -	$ -	$ -

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

ISSUE: Reclassification of Municipal Judge

According to the information we received,

Prior to 2010 , the Municipal Judge position was treated as an employee. The City and the Current Municipal Judge determined that to enable the Municipal Judge to perform services for the City and for other clients, and to avoid any real or perceived issues of conflict that might arise if the Municipal Judge was treated as a City employee, it was determined to change the position to an independent contractor status.

The municipal court shall be presided over, and its functions exercised by a judge, who shall be a licensed member of the bar of this state in good standing, appointed by the City Council, for a term to be at the pleasure of the Council. He shall receive a fixed salary or compensation, not dependent upon the outcome of the matters to be decided by him, and to be fixed by ordinance from time to time. If absent, disqualified or unable to act in any matter or case, the municipal judge may call any eligible person to act and serve temporarily; and, if he fails to or cannot call in a substitute, the Council shall appoint a substitute.

The Council shall provide a suitable place and all supplies and things necessary for the proper functioning of the court.

The forms of complaints and all other rules, procedure, proceedings, costs and fees in the municipal court, shall be prescribed by ordinance, upon the recommendation of the municipal judge.

Before entering upon the duties of his office, each Councilman, the Mayor, the City Manager, the City Attorney, the City Clerk, the Judge of the Municipal Court and each Director of a Department shall take, subscribe and file with the City Clerk an oath or affirmation that he will faithfully perform the duties of the office or position. The City Clerk shall take and subscribe his oath before a notary public.

LAW: Section 3402(a) of the Internal Revenue Code (the Code) provides that every employer making payment of wages shall deduct and withhold federal income taxes.

Code section 3401(c) provides that, for purposes of this chapter, the term "employee" includes an officer, employee, or elected official of a state, or any political subdivision thereof. For this purpose, the regulations include both elected and appointed officials in the definition of "employee." Section 31.3401(c)-1(a), Employment Tax Regulations. The chapter referred to is Chapter 24, Collection of Income Tax at Source on Wages. In other words, section 3401(c) applies only for income tax

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

withholding purposes. For purposes of FICA taxes, employee status is determined under the common law. Code section 3121(d)(2).

The Code does not define the term "public official," but section 1.1402(c)-2(b) of the Income Tax Regulations gives the following examples: the president, the vice president, a governor, a mayor, the secretary of state, a member of Congress, a state representative, a county commissioner, **a judge**, a justice of the peace, a county or city attorney, a marshal, a sheriff, a constable, a registrar of deeds, or a notary public.

Taxes under the Self-Employment Contributions Act (SECA) are imposed pursuant to sections 1401 and 1402 on the gross income, less applicable deductions, derived by an individual from any trade or business. For SECA purposes, the term "trade or business" has the same meaning as when used in Code section 162, relating to trade or business expenses.

Section 1402(c)(1) provides that the performance of the functions of a public office is not a trade or business for SECA purposes. Code section 1402(c)(1) and section 1.1402(c)-2(a)(2)(B).

The State of Colorado Revised Statutes sets the requirements for the appointment of the Municipal Judge and the requirements to take an oath of office.

For FICA purposes, an individual is an employee if, under the common law rules, the relationship between the individual and the person for whom he or she performs services is the legal relationship of employer and employee. Generally this relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which the result is accomplished. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. Section 31.3121(d)-1(c), Employment Tax Regulations.

In applying the common-law rules, the IRS considers whether the service recipient has behavioral and financial control over the worker and evaluates the relationship between the parties, including how they view their relationship.

Behavioral controls are evidenced by facts which indicate whether the service recipient has a right to direct or control how the worker performs the tasks for which he or she is hired. Facts which illustrate the right to control how a worker performs a task include the provision of training or instruction.

Financial controls are evidenced by facts which indicate whether the service recipient has a right to direct or control the financial aspects of the worker's activities. These include significant investment,

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

unreimbursed expenses, making services available to the relevant market, the method of payment, and the opportunity for profit or loss.

The relationship of the parties is generally evidenced by examining the parties' agreements and actions with respect to each other, paying close attention to those facts which show not only how they perceive their own relationship but also how they represent their relationship to others. Facts which illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of, employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship, and whether the services performed are part of the service recipient's regular business activities.

The fact that an individual is employed part-time, or works for more than one employer, is not evidence of independent contractor status. A part-time worker may be an employee under the common-law rules.

While the Code does not define the term "public official," there is a body of case law defining the term. In Buckley v. Valeo, 424 U.S.1 (1975), the Supreme Court stated that anyone who exercises significant authority pursuant to the laws of the United States is an officer. The term "officers" embraces all appointed officials exercising responsibility under the public laws of the nation. Officers perform a significant governmental duty exercised pursuant to a public law. Officers administer and enforce the public law.

Metcalf & Eddy v. Mitchel, 269 U.S. 514 (1926), specifically defines the term "officer." There the Supreme Court considered whether consulting engineers hired by states, municipalities, water supply and sewage districts were independent contractors or "officers and employees" of a state. The Court stated: "An office is a public station conferred by the appointment of a government. The term embraces the idea of tenure, duration, emolument and duties fixed by law. Where an office is created, the law usually fixes its incidents, including its term, its duties, and its compensation." Officers and employees are agents of a state to administer its laws. The independent contractor has liberty of action which excludes control or the right to control characteristic of the employer-employee relationship.

In Pope v. Commissioner, 138 F.2d 1006 (6th Cir. 1943), the Sixth Circuit, following Metcalf & Eddy, established the following standards to define the term "public office." (1) It must be created by the constitution or the legislature, or by a municipality or other body with authority conferred by the legislature. (2) There must be a delegation of a portion of the sovereign powers of government to be exercised for the benefit of the public. (3) The powers conferred and the duties to be discharged must be defined either directly or indirectly by the legislature or through legislative authority. (4) The duties must be performed independently and without control of a superior power other than the law. (5) The office must have some permanency and continuity, and the officer must take an official oath.

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

Internal Revenue Code Section 3403 states that the employer shall be liable for the payment of the tax required to be deducted and withheld.

Regulations 31.3403-1 States that the employer is liable for this tax whether or not it is collected from the employee by the employer.

GOVERNMENT'S POSITION:

The position taken is that any individual who serves as "public officer" or "public official" is an employee of the governmental entity being served for federal income tax withholding purposes. Therefore the City would be responsible for withholding and paying federal income taxes. Although there is no precise definition in the Internal Revenue Code or Regulations for these terms, case law has generally indicated that if a provision in a public law authorizes the employment of an individual, the individual hired under that provision is considered an employee (see Law section above for discussion of the court cases).

The facts indicating that the Municipal Judge position is a "public office" include:

- The office is created by a constitution, charter, or other similar document.
- The office is delegated a portion of powers of the government entity
- The powers conferred or the duties to be discharged are defined by the document creating the position or by subsequent legislation.
- The office has some permanency and continuity, and the officer takes an official oath.

The Municipal Judge is appointed to the position and presides over the Municipal Court. Certain responsibilities with respect to legal issues are delegated to the Municipal Judge under their signed agreement. The Municipal Judge does take an official oath of office. The office has had permanency and continuity, and the Municipal Judge Position was held by an employee prior to 2010.

Based upon the findings, the Municipal Judge is a public official within the meaning of section 3401(c) for income tax withholding purposes. The Internal Revenue Service has determined that the office of Municipal Judge, through its creation under State statute, fits within all of the factors listed above defining "public office", "public officer", or "public official". The Municipal Judge administers and enforces the public laws for the City (Buckley v. Valeo). The Municipal Judge position fulfills the conditions for public office enumerated in Pope v. Commissioner. The City has provided no case law, facts, etc. to refute the findings that the Municipal Judge position is not within the "public official" definition.

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

Even though Private Letters Rulings (PLR) cannot be used or cited as precedent (per Section 6110(j)(3)) they do address the law and the direction the IRS has taken with regard to a position.

In PLR 200146006, the determination was made that a Deputy Tax Collector was an employee for FICA purposes. There were many correlations between the tax collector, a "public official" and the Municipal Judge. They make reference to the following:

"In the case of a public official, many of the statutory provisions which established the status as an official are also relevant to the determination of whether the worker is an employee. These provisions provide facts tending to show that the Town and the Tax Collector have a right to control the way in which the worker performs his duties under the law, i.e., that the worker does not operate with the freedom from control characteristics of an independent contractor." This holds true for the Municipal Judge, who is by statute, a "public official" and has many statutory provisions as outlined above.

Provision of training and instruction is one type of behavioral control. While the Town does not provide instruction to the worker, it has the right to require him to change his methods if they do not conform to legal requirements. The duties of the office of Deputy Tax Collector are established by statute, and the required procedures are set forth in the Collector's Manual. If the Deputy does not conform to required procedures, the Town has the right to require him to change his procedures or to terminate his appointment. The same holds true for the Municipal Judge. The statute and position description outlines the duties of the office. If the Municipal Judge does not conform to the requirements of the contract they can terminate his appointment.

The Deputy Tax Collector operates with a certain amount of independence, but is constrained by the power of the law and the authority of the Town, exercised by the Tax Collector. This is one of the characteristics of an officer in Pope v. Commissioner, as well as an indication of the control typical of employee status. The Municipal Judge is constrained by the power of the law per the Colorado State Statutes and the authority of the City.

The Worker represents himself to the public as an agent of the Town. Though the Worker pays for the forms issued by his office, the requirements of these forms are statutorily established. The forms bear the heading Town of ____, State. The envelopes the Worker uses contain the notice: Official Business, Penalty for Private Use. The same holds true for the Municipal Judge. The Municipal Judge represents himself to the general public as the Municipal Judge.

In the PLR they conclude the evidence establishes the Town has the right to exercise enough behavioral control over the Worker to create an employer-employee relationship. Since the same types of behavioral controls exist with the City and the Municipal Judge, then the determination would be an employer-employee relationship exists as well.

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

In the fact pattern in the PLR, the Worker has a considerable amount of financial independence. He maintains an office and has expenses for equipment and employees. He has a genuine risk of profit or loss different from that of a salaried employee. He does not work exclusively for the Town, but has a number of client towns. His financial arrangements, including records, bank accounts, and reporting, are largely dictated by State statute. Payments to the deputy are limited to penalties and charges for the various notices he serves. He cannot negotiate for himself a payment schedule different from that provided by State statute. He cannot compromise a tax liability, except as permitted by statute. Thus, while he bears a risk of profit or loss, he does not have the full measure of financial independence characteristic of an independent contractor.

This holds true for the Municipal Judge. As outlined in his contract the Municipal Judge has his own office, employees etc. The differences are that the Municipal Judge can work for other clients. The Municipal Judge's financial arrangement is not dictated by State statute, but the judge is paid on an hourly basis, resulting is a less risk for profit or loss.

The evidence concerning the relationship between the Deputy Tax Collector and the Town also contained indicia of both employee and independent contractor status. The parties apparently see their relationship as one of service recipient and independent contractor. The Town reports its payments to the Worker on Form 1099. The Worker does not receive employee benefits or reimbursement for business expenses. On the other hand, the Worker's contract, a yearly Certificate of Appointment as Deputy Collector of Taxes, suggests that he holds an appointed public office and is an employee.

Again, the fact pattern is much the same with the City and the Municipal Judge. They handled the relationship as that of an independent contractor and issued a Form 1099. The Municipal Judge does not receive any employee benefits. The City Council continues to appoint the worker each year as their "Municipal Judge". This too suggests that he holds an appointed public office and is an employee. Each year he continues to hold himself to the public as the "Municipal Judge".

The determination made in the PLR was, "While the relationship between the Town and the Worker has certain indicia of independent contractor status, we conclude that there is sufficient evidence of control and the right to control to establish an employer-employee relationship. In this decision, we gave great weight to the Supreme Court and appellate cases defining the term "public official" and holding public officials to be employees. Therefore the Town and the Worker are subject to FICA tax on the Worker's compensation." If the same weight is given to the Municipal Judge—who is without a doubt a "public official", then he and his staff must be employees subject to FICA tax as well.

The examiner has found through PLR's 9351015 and 9425040 that municipal judges—who are appointed officials were determined to be employees when addressing the same types of common law rules for FICA purposes and if they are appointed "public officials" for federal income tax withholding.

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Municipal Judge
Name of Taxpayer City of Alamosa		Year(s) 2010

Based upon the above facts, an adjustment was made to reclassify the amount paid to the Municipal Judge as wages for federal income tax purposes under section 3401.

Draft - Judge

Form **4666** (Rev. March 2011)

Department of the Treasury - Internal Revenue Service

Summary of Employment Tax Examination

Name and Address of Employer

City of Alamosa
0
0

Employer Identification Number: **00-0000000**

Date of Report:

Type of Report

☐ *Delinquent Tax (Return not filed)* ☐ Increase (Decrease) in Tax (Return filed)

☐ Agreed (This report is subject to review and you will be notified by the Director when it is accepted)

☐ Unagreed

Following is a summary of the results of my examination of your returns as shown on the attached pages of this report.

Tax, Credits and Penalties

a	b	c	d	e		f	g
				Penalty			
Calendar Year	Return Form Number	Delinquent Tax, Increase (Decrease) in Tax	Increase (Decrease) in Allowed Credits	Code Section	Amount	Total Adjustment and Penalties (c+d+e)	Page number of Report
2010	**0**	**2,132.68**	**-**			**2,132.68**	
Total		**2,132.68**				**2,132.68**	

Other Information

No scenario selected.

This does not constitute an income tax examination.

Form 2504-WC IRC section 7436 issues

Examining Officer's Signature | Examining Officer's ID # | Area

Draft - Judge

Employment Tax Examination Changes Report

Name of Employer	Employer Identification number				Calendar year	
City of Alamosa					2010	

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.4%	-	-	-	-
	073	2.90%	-	-	-	-
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079	7.44%	4,992.25	4,992.25	4,992.25	4,992.25
		1.74%	4,992.25	4,992.25	4,992.25	4,992.25
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079	8.68%	-	-	-	-
		2.03%	-	-	-	-
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	006	6.20%				
	073	1.45%				
5. Other adjustments to Social Security and Medicare wages						
6. Other adjustments to Social Security and Medicare wages						
7. Total social security and Medicare tax (lines 1, 2, 3, 4, 5 x rates) plus/minus Line 6	112		$ 458.29	$ 458.29	$ 458.29	$ 458.29
8. Social Security and Medicare tax adjustment under 3121(q)	114					
9. Increase (decrease) in exempt wages/tips paid to qualified employees under IRC 3111(d)	115					
10. Increase (decrease) in tax exemption on wages/tips on Line 9 (Line 9 x rate)	116					
11. Income withholding wage adjustment subject to tax under section 3402		25.00%	-	-	-	-
12. Income tax withholding wage adjustment subject to rates under IRC 3509(a)	079	1.50%	4,992.25	4,992.25	4,992.25	4,992.25
13. Income tax withholding wage adjustment subject to rates under IRC 3509(b)	079	3.00%	-	-	-	-
14. Other income tax withholding wage adjustment						
15. Actual income tax withheld but not previously reported						
16. Other adjustment to income withholding						
17. Total income tax (Lines 11, 12, 13, 14 x rates plus Line 15 plus/minus Line 16)	111		$ 74.88	$ 74.88	$ 74.88	$ 74.88
18. Increase (decrease) in COBRA premium assistance payments under IRC 6432	229					
19. Increase (decrease) in Advance Earned Income Credit under IRC 3507	114					
20. Increase (decrease) in exempt wages/tips paid to qualified employees March 19-31, 2010 under IRC 3111(d)(5)	117					
21. Increase (decrease) in credit for exempt wages/tips on Line 20 (Line 20 x rate)	296					
22. Increase (decrease) in other credits						
23. Net increase (decrease) in credits (sum of Lines 18, 19, 21, and 22)			$ -	$ -	$ -	$ -

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Recreational Instructors
Name of Taxpayer City of Alamosa		Year(s) 2010

ISSUE: Reclassification of Recreational Instructors

According to the information we received, the City operates a Community Recreational Center. The Workers perform services as instructors, teaching a variety of fitness courses including cycling, martial arts, gymnastics, Pilates, zumba, yoga and others, in addition to are courses, including painting, pottery, and others. The worker did not receive training or instructions from the City with respect to the conduct of their classes.

The worker is required to follow a routine or schedule established by the City in that the time for each class is prescheduled. The City makes the final determination as to what classes are taught. The City is responsible to sign up students for the class. The students contact the employees of the recreation center to sign up for a class. If there is a problem with a student in a class, they are directed to the City Community Activities Managers or to the City Facility Manager who will take care of the situation.

The workers use some of their own supplies and the City also provides supplies for the classes. It is understood that the Workers will perform their services personally and do not have any helpers. The Workers perform their services at the City's Community Recreational Center. Some of the workers are paid per session and some are paid a percentage of the students registration fees. If the Workers do not work, they do not receive any pay. The Workers are not eligible for any benefits.

There has not been shown any proof that the Workers perform their services for others nor do they represent themselves to the public as being in the business to perform similar services for others or advertise their availability to do so. The City retains the right to discharge the Workers at any time and the Workers retain the right to terminate their services at any time without either party incurring a liability. The Workers do not have an economic investment in their class instruction in that they assume the risk of realizing a profit or suffering a loss.

The question of whether an individual is an independent contractor or an employee is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Guides for determining the existence of that status are found in three substantially similar sections of the Employment Tax Regulations; namely sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1 relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding, respectively.

Section 31.3121(d)-1(c)(2) of the regulations provides that generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished by the work, but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done, but also as to how it

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Recreational Instructors
Name of Taxpayer City of Alamosa		Year(s) 2010

shall he done. In this connection, it is not necessary that the employer actually direct or control the manner in which services are performed; it is sufficient if he or she has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is the employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the results to be accomplished and not as to the means and methods for accomplishing the result, he is an independent contractor.

In applying the common-law rules, the IRS considers whether the service recipient has behavioral and financial control over the worker and evaluates the relationship between the parties, including how they view their relationship.

Behavioral controls are evidenced by facts which indicate whether the service recipient has a right to direct or control how the worker performs the tasks for which he or she is hired. Facts which illustrate the right to control how a worker performs a task include the provision of training or instruction.

Financial controls are evidenced by facts which indicate whether the service recipient has a right to direct or control the financial aspects of the worker's activities. These include significant investment, unreimbursed expenses, making services available to the relevant market, the method of payment, and the opportunity for profit or loss.

The relationship of the parties is generally evidenced by examining the parties' agreements and actions with respect to each other, paying close attention to those facts which show not only how they perceive their own relationship but also how they represent their relationship to others. Facts which illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of, employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship, and whether the services performed are part of the service recipient's regular business activities.

The fact that an individual is employed part-time, or works for more than one employer, is not evidence of independent contractor status. A part-time worker may be an employee under the common-law rules.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, co adventurer, agent, independent contractor, or the like.

FORM 886A (Rev. May 1980)	Department of Treasury Internal Revenue Service EXPLANATION OF ITEMS	Schedule No. or Exhibit Reclassification - Recreational Instructors
Name of Taxpayer City of Alamosa		Year(s) 2010

When applying the common law rules to the facts of this case, the fact that the worker has performed her services over a period of time is indicative of a continuing relationship between the City and the worker which is characteristic of an employment relationship. Also indicative of an employer-employee is the fact that it is understood that the worker will perform her services personally and does not hire helpers. The worker performs her services on the Cities premises is also characteristic of an employment relationship. The worker does not perform similar services for others, does not represent herself to the public as being in the business to perform such services, and does not advertise her availability to do so. The worker does not have a financial investment as an independent contractor would and therefore does not assume the risk of realizing a profit or suffering a loss.

Therefore it is our conclusion that the Workers are employees of the City under the common law rules and should be reclassified.

Draft Recreational Instructors

Form 4666 (Rev. March 2011)	Department of the Treasury - Internal Revenue Service **Summary of Employment Tax Examination**

Name and Address of Employer	Employer Identification Number	Date of Report
City of Alamosa 0 0	00-0000000	
	Type of Report Delinquent Tax (Return not filed) Increase (Decrease) in Tax (Return filed) Agreed (This report is subject to review and you will be notified by the Director when it is accepted) Unagreed	

Following is a summary of the results of my examination of your returns as shown on the attached pages of this report

Tax, Credits and Penalties

a	b	c	d	e		f	g
				Penalty			
Calendar Year	Return Form Number	Delinquent Tax, Increase (Decrease) in Tax	Increase (Decrease) in Allowed Credits	Code Section	Amount	Total Adjustment and Penalties (c+d+e)	Page number of Report
2010	0	3,878.12	-			3,878.12	
Total		3,878.12				3,878.12	

Other Information

No scenario selected.

This does not constitute an income tax examination.

Form 2504-WC IRC section 7436 issues

Examining Officer's Signature	Examining Officer's ID #	Area

Draft Recreational Instructors

Employment Tax Examination Changes Report

Name of Employer	Employer Identification number	Calendar year
City of Alamosa		2010

	IRS Ref.	(a) Applicable Rate	(b) 1st Quarter	(c) 2nd Quarter	(d) 3rd Quarter	(e) 4th Quarter
1. Social security and Medicare wage adjustment subject to tax under IRC 3101 and 3111	004	12.4%	-	-	-	-
	073	2.90%	-	-	-	-
2. Social security and Medicare wage adjustment subject to tax under IRC 3509(a)	079	7.44%	9,076.00	9,076.00	9,076.00	9,076.00
		1.74%	9,076.00	9,076.00	9,076.00	9,076.00
3. Social security and Medicare wage adjustment subject to tax under IRC 3509(b)	079	8.68%	-	-	-	-
		2.03%	-	-	-	-
4. Social security and Medicare tip adjustment subject to tax under IRC 3101 and 3111	005	6.20%				
	073	1.45%				
5. Other adjustments to Social Security and Medicare wages						
6. Other adjustments to Social Security and Medicare wages						
7. Total social security and Medicare tax (lines 1, 2, 3, 4, 5 x rates) plus/minus Line 6	112		$ 833 36	$ 833 35	$ 833 36	$ 833 36
8. Social Security and Medicare tax adjustment under 3121(q)	114					
9. Increase (decrease) in exempt wages/tips paid to qualified employees under IRC 3111(d)	115					
10. Increase (decrease) in tax exemption on wages/tips on Line 9 (Line 9 x rate)	116					
11. Income withholding wage adjustment subject to tax under section 3402		25.00%	-	-	-	-
12. Income tax withholding wage adjustment subject to rates under IRC 3509(a)	079	1.50%	9,076.00	9,076.00	9,076.00	9,076.00
13. Income tax withholding wage adjustment subject to rates under IRC 3509(b)	079	3.00%	-	-	-	-
14. Other income tax withholding wage adjustment						
15. Actual income tax withheld but not previously reported						
16. Other adjustment to income withholding						
17. Total income tax (Lines 11, 12, 13, 14 x rates plus Line 15 plus/minus Line 16)	111		$ 136 17	$ 136.17	$ 136.17	$ 136.17
18. Increase (decrease) in COBRA premium assistance payments under IRC 6432	229					
19. Increase (decrease) in Advance Earned Income Credit under IRC 3507	114					
20. Increase (decrease) in exempt wages/tips paid to qualified employees March 19-31, 2010 under IRC 3111(d)(5)	117					
21. Increase (decrease) in credit for exempt wages/tips on Line 20 (Line 20 x rate)	296					
22. Increase (decrease) in other credits						
23. Net Increase (decrease) in credits (sum of Lines 18, 19, 21, and 22)			$ -	$ -	$ -	$ -

VENDOR	Vendor Name		TOTAL AMOUNT	Service Provided
01-10682	AMBER HARTMAN		7,020.00	Fitness Instructor
01-11792	APRIL DEPRIST		3.379.50	Taekwondo Instructor
01-11498	CATHERINE RODRIGUEZ		3,520.00	Fitness Instructor
01-90232	CONI GRANT		3,219.75	Fitness Instructor
01-90446	JIM LARRIVA		1,370.00	Pottery Instructor
01-15291	JUDY EGBERT		1,740.00	Fitness Instructor
01-90479	KATHY PARK		2,263.50	Akido Instructor
01-90818	STEVE CLARK		6,450.00	Fitness Instructor
01-11552	TINA BALDWIN		2,610.00	Taekwondo Instructor
1099'S		9	31,572.75	
01-11749	PAM WILLIAMS		2,452.50	Fitness Instructor
01-11546	LINETTE JENKINS		290.00	Fitness Instructor
01-11857	GI GI JOHNSON		140.00	Fitness Instructor
01-11858	TAMY LOPEZ		245.00	Fitness Instructor
01-11859	GRETCHEN MALONE		90.00	Fitness Instructor
01-11280	TOM CLIFF		150.00	Trainer
01-90171	CHRISTINE JONES-DABOLL		348.90	Musik garten
01-11891	DOUG CAMP		262.50	Fly Fishing Instructor
01-11905	TIM BUSEN		200.00	Fitness Instructor
01-11988	ANGELA FELICE		280.00	Gymnastics Instructors
01-11989	TIMOTHY SHUVON		280.00	Gymnastics Instructors
			4,738.90	
	TOTAL		36,311.65	

COUNCIL COMMUNICATION

<table>
<tr><td>DATE: September 4, 2013</td><td>AGENDA NO.</td><td rowspan="4">SUBJECT: Potential participation in the Best and Brightest Internship Program</td></tr>
<tr><td colspan="2">Department Head:
Heather Brooks, City Manager</td></tr>
<tr><td colspan="2">City Manager:
Heather Brooks</td></tr>
<tr><td colspan="2">PRESENTED BY: Heather Brooks</td></tr>
</table>

Recommendation

Staff recommends that City Council consider participating in the Best and Brightest Internship Program.

Background

Christy Culp with DOLA contacted us about their partnership with the University of Colorado to provide internships to graduate-level students. Students are placed in two-year, full-time internships around the State. The estimated annual cost of the intern is $35,000 of which DOLA reimburses for half. If the City is interested in participating in this program, we would need to have our work plan submitted in mid-September. If selected, we would review the resumes and conduct interviews in the October/November timeframe and the intern would start the first of January. This internship would only last two years and we have no intention of transitioning the position to a regular, full-time employee.

When Ms. Culp presented this opportunity to us, my immediate impression was that this may be perfect timing. The City has just experienced a change in leadership. During that change, several projects were put on hold and now that I am on board, we have been evaluating many of our processes. I'm also under the impression that departments may have several projects they could utilize an intern. More specifically, I would like the intern to really focus on economic development including fully utilizing the Buxton software and working with our downtown merchants. We also need to review our special event process and legislative process. There are also several stand-alone projects that an intern could work on.

Issue Before the Council

Does Council wish to participate in the Best and Brightest Internship Program?

Alternatives

Council can decide to not participate in the program.

Fiscal Impact

If desired, staff would include $17,000 plus benefits in the 2014 and 2015 annual budgets.

Legal Opinion

The City Attorney will be present for any comments.

Conclusion

There could be a lot of benefits of participating in this program and the timing appears very appropriate.

COUNCIL COMMUNICATION

<table>
<tr><td>DATE: August 23, 2013</td><td>AGENDA NO. VIII. A. B. 1.</td><td rowspan="4">SUBJECT:

Special Events Permit Application – James Duran Memorial, September 21, 2013</td></tr>
<tr><td colspan="2">Department Head:

Judy A. Egbert, City Clerk</td></tr>
<tr><td colspan="2">City Manager:
Craig Dodd, Interim Manager</td></tr>
<tr><td colspan="2">

PRESENTED BY: Judy A. Egbert</td></tr>
</table>

Recommendation
Approve Special Events Permit as described below.

Background
Event Description:

- September 21, 2013 from 8:00 a.m. to 2:00 a.m.
- Application is for malt, vinous and spirituous liquor
- Location will be at the Elks' facility at 406 Hunt Avenue. Licensed premises is proposed to be the interior of the building plus the entirety of the Elks parking lot, plus Hunt Avenue from Fourth Street to Main Street; and the alley directly adjacent to the Elks parking lot that runs east/west. (see attached)

Factual Findings

- Applicant has possession of the premises through a deed and letter of permission to use the City street.
- Applicant qualifies as a non-profit corporation.
- The application was submitted in a timely manner.
- All applicable fees have been paid.
- No written protests were received by the deadline.

Issue Before the Council
Does Council wish to approve this Special Events Permit?

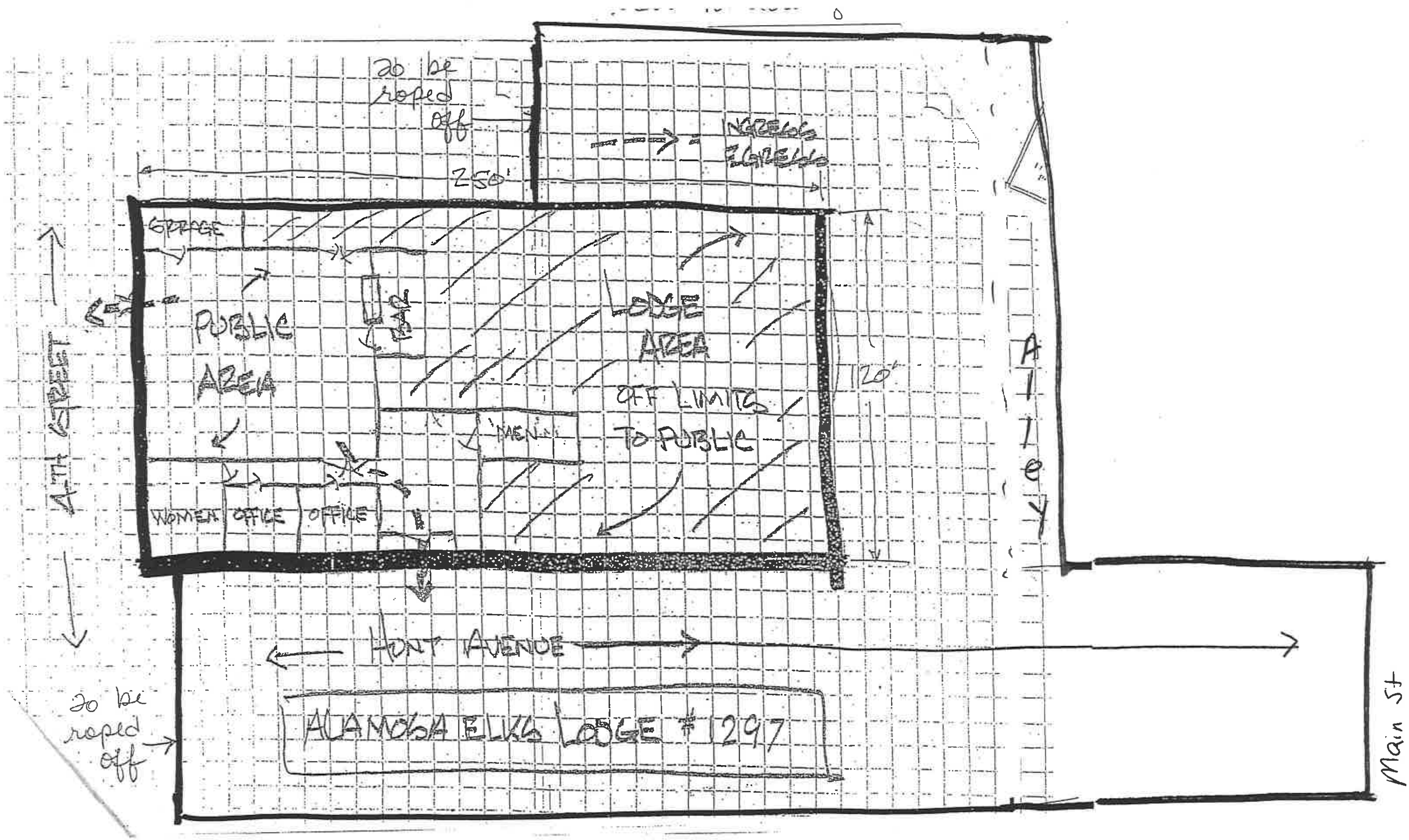
Alternatives

1. Approve the Special Events Permit application.
2. Do not act on approval. Determine potential reasons for denial, and set a hearing date.

Fiscal Impact
N/A

Legal Opinion
No legal issues have been raised regarding this application. Counselor Schwiesow will be available at the meeting if needed.

Conclusion
Approve Special Events Permit application.


to be roped off
250'
INGRESS EGRESS
GARAGE
BAR
PUBLIC AREA
LODGE AREA
OFF LIMITS TO PUBLIC
120'
MEN
WOMEN
OFFICE
OFFICE
Alley
4TH STREET
HUNT AVENUE
to be roped off
ALAMOSA ELKS LODGE #1297
Main St

COUNCIL COMMUNICATION

DATE: August 30, 2013	AGENDA NO. VIII B. 1.	SUBJECT:
Department Head: Judy Egbert, City Clerk		Determine Penalty for Liquor Violation – Spuddy's Cantina
City Manager: Heather Brooks, City Manager		
PRESENTED BY: Judy Egbert		

Recommendation

Determine penalty for liquor violation at Spuddy's Cantina.

Background

The Alamosa Police Department recommended that Council set a Show Cause Hearing for GloRi, LLC d/b/a Spuddy's Cantina. This hearing was held on August 26, 2013. Immediately following that hearing, Council, by motion, agreed that the violation occurred and to determine an appropriate penalty at its next meeting.

Issue Before the Council

What is the appropriate penalty for this liquor violation?

Alternatives

1. Determine an appropriate penalty for this violation
2. Do not take action, and further direct staff. This would require guidance from legal staff.

Fiscal Impact

N/A

Legal Opinion

Counselor Schwiesow has provided the attached draft Findings of Fact, Conclusions, and Order for your consideration. The Findings of Fact summarize the testimony presented at the hearing, and Council's subsequent determination that the violation did occur. The penalty is not specified in the document, and requires that Council make that determination.

Conclusion

Dealing with liquor violations is part of Council's obligation in its role as the Local Licensing Authority.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER
LIQUOR LICENSE DISCIPLINARY ACTION

In Re the Matter of the Show Cause Hearing Concerning:

GloRi, LLC, d/b/a Spuddy's Cantina, 513 State Ave., Alamosa, Colorado.

I. THE HEARING

This matter came on for hearing at a Special Meeting of the Alamosa City Council acting as the local liquor licensing authority on August 26, 2013. Present were: Mayor Rogers, Councilors Greg Gillaspie, Rusty Johnson, Josef Lucero, Charlie Griego, Leland Romero, and Marcia Tuggle. A quorum was declared. Also present: City Clerk Judy Egbert and City Attorney Erich Schwiesow. City Prosecutor Eugene Farish represented the Alamosa Police Department on the Complaint. Licensee GloRi, LLC was present through its members, Ada Boyce and Robert Davis. Council heard testimony and took evidence, took the matter under advisement, and now makes the following findings of fact, conclusions, and issues the following order.

II. FINDINGS OF FACT.

1. GlorRi, LLC, d/b/a/ Spuddy's Cantina, obtained its original liquor license in November of 2010.
2. In May, 2011, a suspension was served for serving alcohol to a minor, 3 days active suspension, with 7 held in abeyance.
3. In February 2013, a suspension was served for serving alcohol to a minor, 10 days active suspension, with 10 held in abeyance for 18 months. That violation was accompanied by circumstances involving the conduct of the establishment as regulated by Section 10-24 of the Alamosa Code of Ordinances and 1 CCR 203-2 Regulation 47-900, although those circumstances were not considered in the suspension. When the matter was investigated, owner Robert Davis used profanity toward the officer, and threw chairs around the bar and punched a cooler in the bar.
4. This matter arises out of a disturbance that occurred on the evening of April 1, 2013, at Spuddy's Cantina, which resulted in serious injuries to a patron requiring hospitalization of that patient. The photographs introduced as Exhibit A show extensive injuries to the face of the victim, which the victim recounts as being the result of being beaten by Ada Boyce and her daughter, Delia Malouff.
5. The investigating officer saw no signs of Ada Boyce having been involved in an altercation, such as bruising or scraping when he interviewed her and took photographs (Exhibit C).
6. The investigating officer did see signs of having been involved in an altercation when he interviewed and photographed Delia Malouff (also Exhibit C). Such signs include minor scratches and bruises.
7. Ada Boyce and Robert Davis both testified that the victim had instigated a fight by throwing bottles at both Delia Malouff and Robert Davis. Ada Boyce confirmed that Delia Malouff knocked the victim off of her bar stool.
8. The Alamosa Police Department has had numerous contacts with Spuddy's since it obtained its license, more than with other bars.

9. The owners of Spuddy's, Ada Boyce and Robert Davis, are frequently intoxicated when the Alamosa Police Department is called to the bar.
10. On the evening of April 1, 2013, during the time that the events that are considered here took place, both Ada Boyce and Robert Davis were intoxicated. There was no evidence that they were serving patrons. The victim recalls being served by Delia Malouff. The owners testified that Gary Ruybal was working as the bartender that evening.
11. Both the vicitim and her friend voluntarily submitted to breath tests at the hospital. The victim's test showed a BAC of 0.90, and her friend's test showed a BAC of 1.91.
12. When officer Pichon went to investigate the bar after having interviewed the witnesses at the hospital, he was given misleading information on the whereabouts of Ada Boyce and Delia Malouff by Robert Davis. Despite being told that Ms. Boyce had left the bar, and was specifically not in the back room, he found Ms. Boyce passed out on the floor in the back room.
13. Shortly after the altercation, as the victim was leaving, Ms. Boyce contacted Officer Brian Cooper, who was in the alley having just left the bar after picking up a patron on a domestic violence warrant. Ms. Boyce reported a disturbance involving the victim throwing a bottle, but did not make clear that there had been a disturbance in the bar.

III. APPLICABLE LAW

A local licensing authority has the power to suspend or revoke any license or permit it has issued for the violation by the licensee or any of the licensee's agents, servants, or employees of nay of the provisions of the Colorado Liquor Code (C.R.S. § 12-47-101 *et seq.*) or any of the rules or regulations authorized by the Liquor Code, or any of the terms and conditions of the permit. C.R.S. § 12-47-601(1).

The Colorado Liquor regulations provide, at 1 CCR 203-2 Regulation 47-900, for maintaining an orderly liquor establishment:

Regulation 47-900
A. Orderliness, loitering, serving of intoxicated persons.
Each person licensed under Article 46, Article 47, and Article 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not serve a known habitual drunkard or any person who displays any visible signs of intoxication, nor shall they permit a known habitual drunkard or any person who displays any visible signs of intoxication to remain on the licensed premises without an acceptable purpose, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

Alamosa's *Code of Ordinances* contains similar provisions at Section 10-24(b), and further requires a report of any disturbances to the police department at Section 10-24(c). However, for purposes of this proceeding, only the violation of regulation 47-900 is considered.

The City has adopted guidelines for penalty ranges for various liquor violations, set forth in Section 10-32 of the *Code of Ordinances of Alamosa, Colorado*. Although there are guidelines concerning service to visibly intoxicated persons, there are no guidelines applicable to violation of the requirement for maintaining an orderly establishment set forth in Regulation 47-900.

IV. CONCLUSIONS

The facts as set forth above compel a conclusion that there has been a violation of Regulation 47-900. The bar owners were intoxicated while present in the bar, and were being served while intoxicated. Other intoxicated patrons (the victim and her friend) were being served. Ada Boyce was involved in an altercation that resulted in serious bodily injury to a bar patron. The owners and their employees were not able to maintain control over the conduct of persons at the bar, such that the safety of bar patrons was clearly endangered. The owners were so intoxicated that they could not provide reasonable assistance to the Alamosa Police Department when it investigated the incident.

This is the third violation of the Colorado Liquor Code since the bar opened less than three years ago. The bar owners are frequently intoxicated on the premises, which is clearly creating a difficulty complying with the requirements to conduct the facility in an orderly fashion.

V. ORDER

Considering all of the facts and circumstances, the Council, acting as the local liquor licensing authority, imposes a sanction of ____ (if applicable – the 10 days held in abeyance from the February, 2013 suspension, shall be served in addition to any suspension imposed as a result of this violation)

Dated this 4th day of September, 2013.

____
Mayor Kathleen J. Rogers
City of Alamosa
Local Licensing Authority

Attest:
(SEAL)

____
Judy A. Egbert, City Clerk