



Reno City Attorney

MEMORANDUM

Date: June 1, 2021
To: Doug Thornley, City Manager
cc: Jackie Bryant, Chief of Staff
Arlo Stockham, Community Development Director
Deborah Lauchner, Finance Director
Thru: Karl S. Hall, City Attorney *KH*
From: Jonathan D. Shipman, Assistant City Attorney *JDS*
Subject: Building Enterprise Fund compliance with NRS 354.59891

I. Question Presented.

Whether NRS 354.59891(6) requires the City to unilaterally reduce the fees for barricade permits, encroachment permits and building permits?

II. Short Answer.

No. Under controlling precedent issued by the Nevada Department of Taxation ("NDOT") on May 8, 2015, NRS 354.59891(6) does not require the City to reduce the fees for barricade permits, encroachment permits and building permits because the City has no pending application before the Nevada Tax Commission ("NTC") to increase building permit fees greater than the change in the CPI.

III. Facts.

This year, for the second consecutive year, the volume of building permits issued by the City will result in unreserved working capital¹ to exceed 50% of the annual operating costs of the City's Building Enterprise Fund.

IV. Legal Analysis.

On its face, NRS 354.59891(6) states that the City must reduce the fees for barricade permits, encroachment permits and building permits if the balance in the City's Building Enterprise fund exceeds 50% of the annual operating costs and capital expenditures for two (2) consecutive fiscal years. Staff has requested guidance as to whether NRS 354.59891(6) requires the City to unilaterally reduce the fees for barricade permits, encroachment permits and building

¹ "Working capital" means the excess of current assets over current liabilities, as determined by the local government at the end of the current fiscal year. NRS 354.59891(1)(i).



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ROBERT R. BARENGO
Chair, Nevada Tax Commission
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Executive Director

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May 8, 2015

Jill Olsen
Assistant Finance Director
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EXHIBIT 1

Dear Jill:

You have requested the Department review the situation regarding the City's building enterprise fund for compliance with the requirements of NRS 354.59891. You advised this office that last year, the City's building enterprise fund exceeded 50% of the annual operating costs and capital expenditures of the program, and as a result, the City lowered the permit fees by 35%. However, this year, the volume of permits issued by the City will result in the unreserved working capital to once again exceed 50% of the annual operating costs. The City is planning on reducing the fees once again. Your specific question is what happens if that isn't enough to get below 50% of the annual operating costs.

NRS 354.59891(2) permits a local government to increase its building permit basis equal to the percentage increase in the CPI (Western Urban) from 1988 to the year prior to the increase, except as provided in subsections (3) and (4). A local government could increase its building permit basis by an amount greater than the percentage change of the CPI if it applies to the Nevada Tax Commission ("NTC") to do so. The NTC could allow an increase greater than the change in the CPI only if it finds that there are emergency conditions impairing the ability of the local government to perform basic functions or if the building permit basis is substantially below that of other local governments and the cost of issuing building permits exceeded the revenues. Neither of these conditions exist in the facts you provided, however, if the City did qualify under one of those conditions, the next step would be to apply to the NTC for an increase in the building fees.

There are several criteria the NTC would use to exempt the City from the CPI limitation on permit fee increases, including whether the local government maintains a balance of unreserved working capital in the enterprise fund that does not exceed 50% of the annual operating costs. In other words, the NTC could not exempt the City from the CPI limitation if the unreserved working capital in the enterprise fund was greater than 50% of the annual operating costs.

Let's say for a moment the City could not perform basic functions or the building permit fees of the City were substantially lower than other local governments. The City would then be