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9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR THE COUNTY OF WASHOE**

11 JENNY BREKHUS,

Case No.:

12 Petitioner,

Dept. No.:

13 vs.

14 CITY OF RENO and NORMA  
15 SANTOYO as DIRECTOR OF  
16 HUMAN RESOURCES of the  
17 CITY OF RENO,

18 Respondents.  
19 \_\_\_\_\_ /

20 **PETITION FOR WRIT OF MANDAMUS**

21 **COMES NOW**, Petitioner JENNY BREKHUS, individually, by and through her  
22 undersigned attorney, and hereby petitions this Court for a Writ of Mandamus directing  
23 Respondent CITY OF RENO and Respondent NORMA SANTOYO in her capacity as  
24 DIRECTOR OF HUMAN RESOURCES to hold a hearing as requested below. This Petition  
25 is filed pursuant to Nevada Revised Statutes, Chapter 34, and Petitioner avers and alleges as  
26 follows:

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**I**

Petitioner Jenny Brekhus, (“Petitioner Brekhus”), is a citizen of the State of Nevada and a resident of the County of Washoe and is over the age of 21 years. At all times relevant, Petitioner was a member of the Reno City Council as a councilmember and employed by the City of Reno.

**II**

Respondent City of Reno, (“City”), was and is a municipal corporation formed and governed by the laws of Nevada and is a resident of Washoe County, Nevada.

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Respondent Norma Santoyo, (“Respondent Santoyo”), at all times relevant has been the Director of Human Resources at the City. Respondent Santoyo is sued solely in her capacity as the Director of Human Resources at the City.

**IV**

NRS 34.160 provides in relevant part that a Writ may be issued by “a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.”

**V**

NRS 34.170 further clarifies that a Writ is to issue “when no plain, speedy and adequate remedy in law.”

**VI**

Reno Municipal Code, (“RMC”), 2.24.200 defines improper government action as “any action taken by a city officer or employee in the performance of the city officer's or employee's official duties, whether or not the action is within the scope of employment of the

1 city Charter,” and “(3) An abuse of authority.” This same RMC specifies that reprisal or  
2 retaliatory action includes “[t]he denial of adequate personnel to perform duties.” An officer is  
3 defined RMC § 2.24.200 as “a person elected or appointed to a position with the city that  
4 involves the exercise of a local governmental power.” Exhibit 1.

## 5 VII

6  
7 RMC § 2.24.250(a) states that the “City of Reno expressly prohibits any form of  
8 reprisal or retaliatory action for good faith reporting of incidents of improper governmental  
9 action or cooperating in related investigations. Any retaliatory conduct of any kind should be  
10 reported to the director of human resources. Furthermore, subsection (b) of this RMC holds  
11 that if “a city officer or employee has disclosed information concerning improper  
12 governmental action and believes that as a result of that disclosure, a reprisal or retaliatory  
13 action has been taken against the city officer or employee, the city officer or employee may  
14 submit a request for a hearing by filing a complaint with the director of human resources in  
15 accordance with section 2.24.220 not later than two years after the information is disclosed  
16 and within 60 days after the alleged reprisal or retaliatory action was taken.” *Id.*

## 18 VIII

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20 An officer is defined in RMC § 2.24.200 as “a person elected or appointed to a position  
21 with the city that involves the exercise of a local governmental power.” *Id.*

## 22 IX

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24 RMC § 2.24.250(c) mandates that a upon a request being submitted to the director of  
25 human resources, a “special administrative hearing officer *shall* be appointed to hear the  
26 matter detailed in the request for a hearing in accordance with RMC Title 1, Chapter 1.05, Art.  
27 VI (administrative hearings). Upon completion, the final investigative report shall be provided  
28 to the hearing officer.” (Emphasis added.) *Id.*

**X**

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2 On November 8, 2021, Petitioner Brekhus, reported to City Attorney Karl Hall that on  
3 November 5, 2021, she observed City Manager Doug Thornley drinking alcohol in his office  
4 while on duty. City Policy 409(V) states in part that, “[w]hile on duty, whether on or off City  
5 property, employees are prohibited from using, being under the influence of, possessing,  
6 manufacturing, distributing, dispensing, and ingesting/inhaling alcohol or illegal drugs.”  
7 Exhibit 2.  
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**XI**

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10 Since filing this report, Petitioner Brekhus has been retaliated against by Mr. Thornley  
11 in the terms and conditions of her employment and role as councilmember, to include changes  
12 in her working conditions and limiting her access to staff. This retaliation has resulted in  
13 Petitioner Brekhus being denied access to adequate personnel to perform her duties. Mr.  
14 Thornley’s refusal to allow Petitioner Brekhus access to personnel to perform her duties only  
15 began after Petitioner Brekhus reported Mr. Thornley to Mr. Hall in November 2021.  
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**XII**

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19 On October 3, 2023, Petitioner Brekhus requested to meet with City Finance Director  
20 Vicki Van Buren to discuss the first quarter budget. Mr. Thornley refused her request and  
21 directed her to only provide questions in writing, again denying Petitioner Brekhus access to  
22 adequate personnel to perform her duties. Exhibit 3.  
23

**XIII**

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25 In response, on November 1, 2023, Petitioner Brekhus’ undersigned counsel sent a  
26 letter to Respondent Santoyo requesting a special administrative hearing officer be assigned,  
27 and a hearing scheduled in accordance with RMC § 2.24.250(c), to hear the multiple  
28

1 complaints of retaliation by Petitioner Brekhus. On this same date, Respondent Santoyo  
2 confirmed receipt of Petitioner Brekhus' request. Exhibit 4.

3 **XIV**

4 Pursuant to RMC § 2.24.250(b), Petitioner Brekhus' request for a special  
5 administrative hearing officer and hearing was made within two years of the original  
6 disclosure of Petitioner Brekhus' report of improper governmental action and within 60 days  
7 of the last act of retaliatory action.

8 **XV**

9  
10 On November 21, 2023, Brian Irvine, external counsel for the City, provided a letter to  
11 Petitioner Brekhus in which he stated that the City was denying Petitioner Brekhus' request  
12 for a hearing under RMS 2.24.250(b) as it was "untimely." This claim of untimeliness was  
13 made despite the fact that Petitioner Brekhus clearly stated the last act of retaliation occurred  
14 within 60 days of the request and less than two years after her original disclosure. Exhibit 5.

15 **XVI**

16 Pursuant to RMC § 2.24.250(c), Respondent Santoyo has a lawful duty to obtain a  
17 special administrative hearing officer and to hold a hearing in accordance with RMC Title 1,  
18 Chapter 1.05, Art. VI (administrative hearings). inasmuch as she received information and  
19 timely request filed by Petitioner Brekhus.

20 **XVII**

21 By and through her external counsel, Respondent Santoyo has refused to hold a  
22 hearing as required by RMC § 2.24.250(c),

23 **XVII**

24 Respondent Norma Santoyo has acted arbitrarily and abused her discretion by refusing  
25 to hold a hearing as requested by Petitioner.

**XIX**

Respondent City of Reno has acted arbitrarily and abused its discretion by refusing to hold a hearing as requested by Petitioner.

**XX**

Petitioner has no plain, speedy, or adequate remedy at law or equity other than this instant Petition for Writ of Mandamus.

**XXI**

Petitioner has been required to obtain the services of an attorney to seek this Writ of Mandamus.

**WHEREFORE**, Petitioner JENNY BREKHUS prays for relief as follows:

1. That the Court issue a Writ of Mandamus, returnable within ten days, compelling Respondents CITY OF RENO and Respondent Director of Human Resources NORMA SANTOYO to hold a hearing to determine the validity Petitioner Brekhus' claims;
2. That Petitioner Brekhus timely filed a request for the appointment of a special administrative hearing officer and a hearing.
3. That Petitioner Brekhus be awarded all costs and attorney's fees incurred by her in this matter; and
4. For such other and further relief as the Court deems just in these premises.

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**AFFIRMATION**

1  
2 The undersigned affirms that this document does not contain the personal information  
3 of any person.

4  
5 **RESPECTFULLY SUBMITTED** this 22nd day of December, 2023.

6  
7 /s/Ronald J. Dreher

8 Ronald J. Dreher, Esq.

9 State Bar No. 15726

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14 *Attorney for Petitioner*

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**EXHIBIT LIST**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>	<b><u>No. of Pages</u></b>
<b>1</b>	RMC §§ 2.24.200 and 2.24.250	3
<b>2</b>	Reno City Policy 409	12
<b>3</b>	October 3, 2023, email from City Manager Doug Thornley to Petitioner Brekhus regarding request to meet with the Finance Director.	1
<b>4</b>	November 1, 2023, letter requesting hearing.	1
<b>5</b>	November 21, 2023, letter denying hearing request.	3

Exhibit 1

Exhibit 1

## ARTICLE II. - IMPROPER GOVERNMENTAL ACTION

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### Sec. 2.24.200. - Definitions.

⋮

The following words and phrases, when used in this article shall have the meanings respectively ascribed to them:

*City officer* means a person elected or appointed to a position with the city that involves the exercise of a local governmental power, trust or duty, including:

- (1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of city policy; and
- (2) The expenditure of money; and
- (3) The enforcement of state law, regulation and city ordinances.

*Employee* means any person who performs public duties under the direction and control of a city officer for compensation paid by or through the city.

*Improper governmental action* means any action taken by a city officer or employee in the performance of the city officer's or employee's official duties, whether or not the action is within the scope of employment of the city officer or employee, which is:

- (1) In violation of any state law or regulation, including the city Charter;
- (2) In violation of an ordinance of the City of Reno;
- (3) An abuse of authority;
- (4) Of substantial and specific danger to the public health or safety; or,
- (5) A gross waste of public money.

*Official authority or influence* includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action.

*Reprisal or retaliatory action* includes:

- (1) The denial of adequate personnel to perform duties;

- (3) Frequent replacement of members of the staff;
- (4) The refusal to assign meaningful work;
- (5) The issuance of letters of reprimand or evaluations of poor performance;
- (6) A demotion;
- (7) A reduction in pay;
- (8) The denial of a promotion;
- (9) A suspension;
- (10) A dismissal;
- (11) A transfer;
- (12) Frequent changes in working hours or workdays; or
- (13) If the city officer or employee is licensed or certified by an occupational licensing board, the filing with that board, by or on behalf of the employer, of a complaint concerning the city officer or employee, if such action is taken, in whole or in part, because the city officer or employee disclosed information concerning improper governmental action.

(Ord. No. 6474, § 1, 7-18-18)

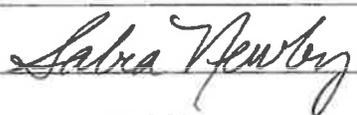
**Sec. 2.24.250. - Retaliation prohibited; appeal.**

- (a) The City of Reno expressly prohibits any form of reprisal or retaliatory action for good faith reporting of incidents of improper governmental action or cooperating in related investigations. Any retaliatory conduct of any kind should be reported to the director of human resources.
- (b) If a city officer or employee has disclosed information concerning improper governmental action and believes that as a result of that disclosure, a reprisal or retaliatory action has been taken against the city officer or employee, the city officer or employee may submit a request for a hearing by filing a complaint with the director of human resources in accordance with [section 2.24.220](#) not later than two years after the information is disclosed and within 60 days after the alleged reprisal or retaliatory action was taken.
- (c) A special administrative hearing officer shall be appointed to hear the matter detailed in the request for a hearing in accordance with [RMC Title 1, Chapter 1.05](#), Art. VI (administrative hearings). Upon completion, the final investigative report shall be provided to the hearing officer.
- (d) If the special administrative hearing officer determines that the action taken by the city officer or employee named in the request for hearing was a reprisal or retaliatory action, the special administrative hearing officer may issue an order directing the proper person to desist and refrain from engaging in such action. If applicable, the director of human resources shall then consult with the mayor, the city manager, or the city attorney, as appropriate, to recommend options for action to the city council pursuant to [section 2.24.220\(g\)](#).

(Ord. No. 6474, § 1, 7-18-18)...

# Exhibit 2

# Exhibit 2

<b>CITY OF RENO – Policies and Procedures</b>	
<b>Alcohol and Drug Use</b>	
<b>Approved by: Sabra Newby, City Manager</b>	<b>Number: 409</b>
	<b>Effective Date: 05-03-2019</b>

**I. PURPOSE**

The purpose of this policy is to provide a safe workplace through guidelines prohibiting alcohol and drugs in the workplace and to comply with the Federal Drug Free Workplace Act of 1988.

**II. REVISION HISTORY**

05-03-19      Adopted

**III. REFERENCES**

- Federal Drug Free Workplace Act of 1988
- Federal Schedules of Controlled Substances Title 21 C.F.R. §1308
- Nevada's Uniform Controlled Substance Act Schedules I through V
- Nevada Revised Statutes (NRS) §453, 484
- Nevada Administrative Code (NAC) §453

**IV. PERSONS AFFECTED**

All elected officials, officers, and City of Reno employees.

**V. POLICY**

It is the policy of the City of Reno to provide a safe, healthy, and productive work environment for all employees and the public. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner. While on duty, whether on or off City property, employees are prohibited from using, being under the influence of, possessing, manufacturing, distributing, dispensing, and ingesting/inhaling alcohol or illegal drugs.

The City is committed to provide employees with substance abuse counseling, prevention, and treatment information and services through internal training and the Employee Assistance Program (EAP).

The City of Reno requires pre-employment, post-offer drug screening as part of the hiring process for all applicants, including those applying for safety-sensitive positions. Post-offer

employment screening will insure alcohol/drug free candidates for employment and this policy is intended to secure an alcohol and drug free workplace during employment with the City of Reno.

## VI. DEFINITIONS

- A. Adulterated Specimen – A specimen that contains a substance that is not expected to be present in human urine or contains a substance expected to be present, but at an unexpected concentration or condition.
- B. Alcohol – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, regardless of how it is packaged or in what form the alcohol is stored, utilized, or found.
- C. Confirmed Positive – A second analytical procedure used by the testing laboratory to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle to ensure accuracy.
- D. Controlled Substance – Any and all of the substances listed on Schedules I through V as set forth in the Federal Schedules of Controlled Substances Title 21 C.F.R. §1308, Nevada's Uniform Controlled Substance Act, NRS §453, and NAC §453.
- E. Credible Source – A person who is trustworthy, entitled to be believed, entitled to have their oath/affidavit accepted as reliable, has a good reputation for veracity, has knowledge/understanding of the circumstances, and is a disinterested relation to the matter in question.
- F. Drug (or Illegal Drug) – All controlled substances as listed in Schedules I through V of the Nevada Uniform Controlled Substance Act and the Federal Schedules of Controlled Substances Title 21 C.F.R. §1308.
- G. Drug Test (or Drug Screening Test) – Any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites.
- H. Employee – All City of Reno Employees. Employees who are required to possess a Commercial Driver's License are also subject to the policies and procedures contained in the City's policy regarding alcohol and drug testing for Commercial Driver's License designated positions as mandated by Federal law.
- I. Employee Assistance Program – A program which is recognized by the City of Reno for employee assessment, counseling, or possible referral to an alcohol/drug rehabilitation program.

- J. Illegal Use – The consumption or possession of any federally controlled substance, consumption of an alcoholic beverage during work hours, misuse of legally prescribed drugs, and the use of illegally obtained prescription drugs.
- K. Job Applicant – An individual who has applied for a position with the City of Reno who has been selected and offered a position contingent upon completion of a background check.
- L. Licensed Physician – A physician that meets all the criteria established by the State of Nevada for obtaining a license to practice medicine or a physician licensed to practice medicine in another state under that state's established law regarding the licensure of medical practice physicians.
- M. Medical Review Officer (MRO) – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug and alcohol program and evaluating medical explanations for certain drug testing results.
- N. Positive Result – The result reported by a testing laboratory when a specimen contains an alcohol, drug, or drug metabolite concentration equal to or greater than the cutoff concentrations contained in this policy.
- O. Reasonable Suspicion – Based on specific, objective facts derived from contemporaneous observations concerning the appearance, behavior, speech, or odors of an employee from which one can reasonably infer that the employee is under the influence of a controlled substance/alcohol. The following factors are possible, but not exclusive, indicators to consider in conjunction with other relevant information, including the employee's explanation:
1. The physical symptoms or manifestations of drugs or alcohol use such as altered/slurred speech, repeated incoherent statements, dilated/constricted pupils, flushed skin, excessive sweating, excessive drowsiness, or loss of consciousness without reasonable explanation;
  2. Unexplained, abrupt, and radical changes in behavior without reasonable explanation;
  3. Inability to walk steadily, maintain a straight line, or perform normal manual functions essential to an employee's position without reasonable explanation;
  4. Unexplained, prolonged, or frequent disappearances from the work area;
  5. Accidents or near-accidents on the job that appear related to unexplained sensory or motor skill malfunctions;

6. The smell of alcoholic beverage or drugs on the employee when the employee is expected to be performing job duties;
  7. The direct observation of drugs or alcohol use while at work or on duty, or possession of drugs, alcohol, or paraphernalia; or
  8. A report of reasonable suspicion provided by a reliable and credible source.
- P. Safety-Sensitive Position – A position in which the employee discharges duties fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences.
- Q. Screening Test – A test of a person’s breath/blood to detect the general presence of alcohol; or urine to detect the general presence of a controlled substance or any other drug, which could impair that person's ability to perform the duties of employment safely and efficiently.
- R. Specimen – A tissue, hair, or product of the human body capable of revealing the presence of alcohol, drugs, or their metabolites.
- S. Split-Specimen – After one urine specimen is collected, the urine is then split into a primary (A) specimen and a secondary (B) specimen.
- T. Substance Abuse Professional – A person who evaluates employees who have violated this policy and makes recommendations concerning education, treatment, follow-up testing, and after-care of the employee.
- U. Under the Influence – A condition in which a person is impaired by use of alcohol or a drug in any detectable manner. The symptoms of influence are not confined to those consistent with obvious impairment of physical or mental ability.

## VII. RESPONSIBILITIES

- A. The Human Resources Department is responsible for:
1. Establishing procedures for use when reasonable suspicion exists to believe an employee is under the influence of or impaired by alcohol/drugs;
  2. Developing guidelines for appropriate disciplinary action when employees are found to have violated this policy; and
  3. Attempt to make contact with a tested employee when requested by an MRO.

- B. Department heads are responsible for consulting with the Human Resources Department before imposing, or opting not to impose, discipline for violations of this policy.
- C. Employees are responsible to inform their supervisors of:
  - 1. Use of prescription medications that have the potential to impair job performance (Immediately upon reporting to work after being prescribed the medication. When the employee has taken medication that could impair work performance, the supervisor has the discretion to reassign job tasks, as needed);
  - 2. Any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
  - 3. Reasonably believing that another employee is under the influence of alcohol/drugs; or
  - 4. Consuming any alcohol/drugs which could interfere with the safe and efficient performance of their duties.

## **VIII. PROCEDURES**

- A. Informing Employees about Alcohol and Drug Testing: After being hired, all employees shall be fully informed of the City of Reno's alcohol and drug testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the employer shall inform the employees on how the tests are conducted, what the test can determine and the consequence of testing positive for alcohol/drug use. After initial training and prior to any testing, the employee will be required to sign the Training Acknowledgement Form.
- B. Employee Consent: An employee's consent to a screening test for alcohol and drug usage is required as a condition of continued employment and an employee's refusal to consent will result in termination. Consent to an examination and testing includes an employee's obligation to fully cooperate. Upon request, an employee must promptly complete any required forms/releases and promptly provide a specimen for alcohol and drug testing.

C. Employee Testing

1. Costs: The City of Reno will bear the cost of pre-employment, post-offer testing; reasonable suspicion testing; and post-accident testing. The cost for a Substance Abuse Professional (SAP) evaluation, prescribed treatment, return to work testing, and follow-up testing is the responsibility of the employee. SAP evaluations and any prescribed treatment are the responsibility of the employee.
2. Reasonable Suspicion Testing
  - a. If a supervisor has personally observed that objective evidence exists establishing reasonable suspicion to believe an employee's work performance is impaired due to alcohol/drug use or abuse, the supervisor shall inform the employee that they suspect the employee of being in violation of this policy and will give the employee the opportunity to respond. After considering the employee's response, the supervisor will determine if testing is warranted and will notify the employee if testing is required consistent with the conditions set forth in this policy.
  - b. Reasonable suspicion testing referrals must be made by a supervisor who is trained to detect the signs and symptoms of alcohol/drug use, who has personally observed the employee's behavior and appearance, and who has reasonably concluded that the employee may be adversely affected or impaired in their work performance due to possible prohibited alcohol/drug use or abuse. The supervisor is required to complete the Reasonable Suspicion Checklist. A copy of this document shall be provided to the employee upon request. A copy of the document will be placed in the employee's personnel file and shall be made a part of the alcohol/drug test results. An employee may be directed to undergo reasonable suspicion testing at any time during the employee's work hours. If the employee chooses to leave without completing the reasonable suspicion testing, it will constitute as a refusal.

D. Alcohol and Drug Testing Procedure

1. Designation of Testing Laboratory Collection Sites: The City of Reno will designate the testing laboratory collection sites to perform the alcohol/drug testing and collection of specimens. The lab must be certified by the State of Nevada. The employee will not be allowed to transport themselves to or from the testing collection site in the event of a reasonable suspicion test or post-accident test. The immediate supervisor or a City representative will arrange transportation and accompany the employee to the testing site, stay in the waiting room until notified that the collection has been completed, and then arrange transportation home for the employee.
2. Alcohol Testing: After notification that an alcohol test is required, the employee shall be transported to a testing laboratory certified by the State of Nevada and designated by the City of Reno. The alcohol screening test shall be conducted with the use of an evidential breath-testing (EBT) device approved by the Nevada Committee on Testing for Intoxication and certified as being designed and manufactured to be accurate and reliable to determine the alcohol concentration in a person's breath. The test shall be conducted by a person competent to operate EBT devices for testing a person's breath pursuant to NRS 484C.630. If the initial screening test indicates that the concentration of alcohol in the employee's breath is .04 gram by weight of alcohol per 210 liters of their breath or greater, a second breath screening test shall be conducted as a confirmation test. There shall be a 15 minute waiting period between the completion of the initial test and the initiation of the confirmation test. If the confirmation test indicates that the concentration of alcohol in the employee's breath is .04 gram by weight of alcohol per 210 liters of their breath or greater, it shall be considered a positive alcohol test. Whenever the result of the confirmation test is different than the result of the initial test, the confirmation test result shall control.
3. Drug Testing
  - a. After notification that a drug test is required, the employee shall be transported to a testing laboratory certified by the State of Nevada and designated by the City of Reno. Drug screening will be done by urinalysis of urine specimens provided by the employee under controlled conditions. The urine specimen will be collected using a split-specimen method. Each specimen shall be accompanied by chain of custody documents.

- b. An initial drug screen test will be conducted on the primary urine specimen using immunoassay detection technology. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amount of drug(s)/drug metabolites identified by the GC/MS test are at or greater than, the minimum thresholds established in NRS 484C.L10(3), as set forth in the following table:

<b>Prohibited Substance</b>	<b>Urine Nanograms/mL</b>
Amphetamine	500
Cocaine	150
Cocaine metabolite	150
Heroin	2,000
Heroin metabolite	
- Morphine	2,000
Heroin metabolite	
- 6-monoacetylmorphine	10
Lysergic acid diethylamide	25
Marijuana	10
Marijuana metabolite	15
Methamphetamine	500
Phencyclidine (PCP)	25

- 1) The foregoing schedule is subject to change when necessary to reflect and remain consistent with any legislative amendments which may be made to the schedule contained in NRS 484C.L10(3).

- c. The laboratory must report test results to the City of Reno's designated Medical Review Officer (MRO) within an average of five working days after the receipt of the specimen by the laboratory. Test results must be certified as accurate. The report must identify any drugs/metabolites that were identified in the specimen and whether the results are positive or negative. The testing laboratory will advise only the employee and the MRO of any positive results. A split sample of the specimen shall be reserved for an independent analysis in the event of a positive test. The tested employee has 72 hours following notification of a positive result in which to request that the split secondary sample be analyzed. All samples must be stored in a scientifically acceptable preserved manner and retained by the laboratory for the duration of any grievance, disciplinary action or legal proceeding, whichever is longer.

4. The Medical Review Officer

- a. The MRO for the City of Reno will be any physician designated by the contracted lab who is a licensed physician with knowledge of drug abuse disorders and is certified as an MRO for drug testing.
- b. The MRO shall review all drug testing results they receive and interpret confirmed positive test results to determine if there is an alternative medical explanation for the confirmed positive result. This shall include conducting a medical interview with the tested employee to ascertain the tested employee's medical history and other relevant biomedical factors. The MRO shall also review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication.
- c. If the MRO, after making reasonable efforts to contact the tested employee, is unable to do so, the MRO shall request that the Human Resources Department attempt to make contact with the tested employee. The MRO should not reveal the test result to the employer. The employer shall then attempt to make contact with the tested employee and shall advise the tested employee to contact the MRO within five days after being contacted by the employer. Human Resources Department shall inform the MRO once the tested employee has been so instructed or if they were unable to contact the tested employee.
- d. The results of a positive drug test can only be released to the employer by the MRO once they have completed their review and analysis of the laboratory's test and have made a reasonable effort to contact and interview the tested employee. The City shall keep the test results confidential.

E. Consequences of a Positive Test, Return to Duty, and Follow-up Testing

1. An employee who is found to have a breath alcohol concentration of .04 or greater, or who tests positive for a prohibited drug, will at a minimum be immediately suspended for thirty working days without pay and may be subject to disciplinary action up to and including termination. If not terminated, the employee must agree to being evaluated by an SAP selected by the City of Reno, who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol/controlled substance misuse. Based on that evaluation, the SAP will determine the type of treatment for the employee. If the evaluation determines the employee's problems are beyond treatment, then termination of employment would result. If treatment is recommended, the program of treatment must be undertaken by the employee until, in the opinion of the SAP, it is safe for the employee to return to work, subject to the terms of the leave taken. Prior to the employee returning to work, the employee must undergo a return-to-duty drug test and must test negative for alcohol/drugs. Additionally, the employee must undergo periodic random follow-up drug/alcohol testing over a period of time that the SAP deems appropriate for that particular individual. If the employee fails to successfully comply with any of these conditions, the employee will be subject to immediate termination. Any employee who has had the opportunity to return to work after violation of the alcohol and drug testing policy, who once again tests positive for alcohol/drugs while on duty, will be terminated.

- F. Voluntary Request for Assistance: All employees who voluntarily seek assistance for an alcohol or drug problem will be given the opportunity to participate in an approved rehabilitation program at the employee's expense, provided the request for assistance is made prior to the employer's request that the employee submit to an alcohol/drug test. A request for assistance to enter a rehabilitation program made by the employee after being requested to submit to an alcohol/drug test will not negate testing, nor preclude the City of Reno from proceeding with disciplinary action including termination of employment, if the test results are positive.

G. Consequence for Refusal to Submit to a Test

1. Refusal to submit to an alcohol or drug test occurs when an employee:
  - a. Does not appear for their appointment for alcohol/drug testing without a reasonable explanation;
  - b. Refuses to test;
  - c. Adulterates or dilutes the specimen;

- d. Substitutes the specimen with that from another person or sends an imposter to the test;
  - e. Will not sign the required forms;
  - f. Refuses to cooperate in the testing process in such a way that unduly delays or prevents completion of the test;
  - g. Leaves before the testing process has been completed;
  - h. Fails to provide adequate breath for testing without a valid medical explanation after they have received notice of the requirement for breath testing;
  - i. Fails to provide an adequate urine specimen for drug testing without a valid medical explanation after they have received notice of the requirement for urine testing; or
  - j. Engages in conduct that clearly obstructs the testing process, including a refusal to sign forms provided at the collection site.
2. Refusal to submit to an alcohol/drug test means that the employee will be terminated.

H. Confidentiality of Records

1. The results of an alcohol/drug screening test taken pursuant to the terms of this policy are confidential and:
- a. Are not admissible in a criminal proceeding against the person tested;
  - b. Must be securely maintained by the Human Resources Department (except CDL) separately from the tested employee's personnel file; and
  - c. Must not be disclosed to any person, except:
    - 1) Upon the written consent of the tested employee;
    - 2) Minimal information as required by the employee's Department Head or immediate supervisor for the purposes of imposing disciplinary action, if warranted;

- 3) As required by medical personnel for the diagnosis or treatment of the person tested, if the person is physically unable to give the person's consent to the disclosure;
- 4) As required pursuant to a properly issued subpoena;
- 5) As required for the administration of a plan of benefits for employees;
- 6) When relevant in a dispute between the City of Reno and the tested employee, the test results may be provided to the decision-maker or designated parties to a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee, and arising from the results of an alcohol/drug test administered under this policy.

d. Upon written request, an employee shall receive copies of any records pertaining to their alcohol or drug test results.

I. Training Program for Supervisors and Employees

1. The City of Reno shall provide supervisors designated to determine whether reasonable suspicion exists to receive a minimum of two hours of training regarding the signs and symptoms of alcohol/drug use; criteria for reasonable suspicion testing; procedures for documenting reasonable suspicion testing; and getting the employee tested. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol and drug use.
2. The City of Reno will ensure that all employees receive information concerning the effects that alcohol use and controlled substances have on an individual's health, work, and personal life; the signs and symptoms of an alcohol or controlled substances problem; and available methods to intervene when an alcohol or a drug problem is suspected including referral to the City of Reno designated EAP.

J. Severability: If any part or provision of this policy should be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this policy shall not be affected and shall continue in full force and effect.

END

# Exhibit 3

# Exhibit 3

**From:** Doug Thornley <thornleyd@reno.gov>  
**Sent:** Tuesday, October 3, 2023 10:59 AM  
**To:** Eric Edelstein <EdelsteinE@reno.gov>; JW Hodge <HodgeJW@reno.gov>; Jackie Bryant <BryantJ@reno.gov>; Jenny Brekhus <BrekhusJ@reno.gov>; Karl Hall <HallK@reno.gov>; Meghan Ebert <EbertM@reno.gov>; Vicki Van Buren <VanBurenV@reno.gov>  
**Subject:** Q1 Budget Augmentation

Councilmember Brekhus,

As per my previous direction, please review the documents associated with the Q1 budget



Exhibit 4

Exhibit 4

# DREHER LAW

Labor Advocacy

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November 1, 2023

*via email*

Norma Santoyo  
Director of Human Resources  
City of Reno  
1 E. First Street  
PO Box 1900  
Reno, NV 89505

**RE: REQUEST FOR HEARING**

Dear Ms. Santoyo,

I represent Councilmember Jenny Brekhus and, pursuant to Reno Municipal Code, (“RMC”), Section 2.24.250, we are hereby formally requesting a special administrative hearing officer be appointed to hear the multiple complaints of retaliation that Councilmember Brekhus has suffered since reporting her observations of City Manager Doug Thornley drinking alcohol in his office.

RMC Section 2.24.250 provides that if, “a city officer or employee has disclosed information concerning improper governmental action and believes that as a result of that disclosure, a reprisal or retaliatory action has been taken against the city officer or employee, the city officer or employee may submit a request for a hearing by filing a complaint with the director of human resources.”

Councilmember Brekhus, since making her initial report on November 7, 2021, has experienced repeated, and increasingly serious, acts of retaliation from the City Manager, other City officials, and staff members. The most recent of these acts occurred on October 3, 2023. The continued violation doctrine mandates that all retaliatory actions taken since Councilmember Brekhus’ first report be included and investigated by the special administrative hearing officer.

Please advise when this officer will be appointed and when the hearing will take place. I’m happy to answer any questions you may have or to discuss this further.

Very truly yours,



Ronald J. Dreher  
Attorney at Law

Cc: Mayor Hilary Schieve  
Reno City Council Members  
Ronald P. Dreher, AIS

# Exhibit 5

# Exhibit 5



100 WEST LIBERTY STREET, SUITE 940  
RENO, NV 89501-1991  
TELEPHONE: 775-343-7500  
FACSIMILE: 844-670-6009  
<http://www.dickinsonwright.com>

BRIAN R. IRVINE

November 21, 2023

Ronald J. Dreher  
Attorney at Law  
P.O. Box. 6494  
Reno, NV 89513

Via Email: [dreherlaw@outlook.com](mailto:dreherlaw@outlook.com)

Re: November 1, 2023 request for administrative hearing by Reno City Council  
Member Jenny Brekhus

Dear Mr. Dreher:

This letter responds to your November 1, 2023 letter to Norma Santoyo requesting an administrative hearing, pursuant to Reno Municipal Code § 2.24.250, of "multiple complaints of retaliation that Councilmember Brekhus has suffered since reporting her observations of City Manager Doug Thornley drinking alcohol in his office." Your letter further notes that:

Councilmember Brekhus, since making her initial report on November 7, 2021, has experienced repeated, and increasingly serious, acts of retaliation from the City Manager, other City officials, and staff members. The most recent of these acts occurred on October 3, 2023. The continued violation doctrine mandates that all retaliatory actions taken since Councilmember Brekhus' first report be included and investigated by the special administrative hearing officer.

My partner, Brooks Westergard followed up with you earlier this month and requested that you provide supportive authority regarding the application of the continuing violation doctrine to these facts, and additional detail regarding the allegations of retaliation as alleged in your November 3, 2023 letter, including the alleged retaliation that occurred on October 3, 2023. We received your email response on November 16, 2023, in which you stated that "City Manager Thornley denied Councilmember Brekhus access to the Finance Director on October 3, 2023, despite Councilmember Brekhus' request" and that "[r]egarding the continuing violation doctrine, it is established that a series of discriminatory actions can be included as evidence and be considered when evaluating a current charge."

Ronald J. Dreher  
Attorney at Law  
Page 2 of 3

As you are aware, Reno Administrative Code § 2.24.250(b) provides:

If a city officer or employee has disclosed information concerning improper governmental action and believes that as a result of that disclosure, a reprisal or retaliatory action has been taken against the city officer or employee, the city officer or employee may submit a request for a hearing by filing a complaint with the director of human resources in accordance with section 2.24.220 not later than two years after the information is disclosed **and** within 60 days after the alleged reprisal or retaliatory action was taken.

(Emphasis supplied).

We have analyzed the allegations in your recent letter and email and conducted research into the potential applicability of the continued violations doctrine to those facts. Based upon that analysis and research, it is clear that Councilmember Brekhus's request for an administrative hearing is untimely. The alleged reprisal or retaliatory action cited in your November 16, 2023 email is that "City Manager Thornley denied Councilmember Brekhus access to the Finance Director on October 3, 2023, despite Councilmember Brekhus' request." However, this was not an independent action by Mr. Thornley; instead, it was a continuation of the policy Mr. Thornley established to deny Councilmember Brekhus direct access to staff due to her treatment of staff.

As you are aware, Mr. Thornley advised Councilmember Brekhus of his decision to not permit Councilmember Brekhus to meet directly with staff and instead to obtain information from staff in writing and/or through Mr. Thornley on October 20, 2022, and the policy has been consistently utilized since that time. Councilmember Brekhus acknowledged and challenged this policy in writing on October 21, 2022, and at that point had all of the information she needed to request an administrative hearing challenging that policy, but did not do so within 60 days after the policy was implemented, as required by the City Code. As such, the continued violations doctrine does not apply, and Councilmember Brekhus's request for an administrative hearing is untimely. *See Knox v. Davis*, 260 F.3d 1009, 1014 (9th Cir. 2001) (finding that the continued violations doctrine did not resuscitate untimely claims where the spouse of an incarcerated inmate was denied visitation rights, holding that "notice of total and permanent suspension on January 20, 1996 started the running of the statute of limitations. Subsequent denials to requests to visit or correspond with inmates at CDC facilities, where the basis for the denials rests on the letter of permanent suspension, are nothing more than the delayed, but inevitable, consequence of the total and permanent suspension decision."); *see also Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S.Ct. 2162, 2169 (2007) (affirming the Eleventh Circuit's decision that the plaintiff's claim, at root, attacked the decision that led to her disparate pay, and that instead of supplying grounds for additional claims in and of themselves, her paychecks represented the mere consequences of the earlier decision, as to which any claim was time-barred.).

Ronald J. Dreher  
Attorney at Law  
Page 3 of 3

Accordingly, the City does not agree with Councilmember Brekhus's position that she is entitled to an administrative hearing. She failed to timely request a hearing on the alleged reprisal or retaliatory action, which was Mr. Thornley's policy instituted more than one year ago. That policy has been consistently applied since that time, and the "new" allegations in your recent letter and email are merely consequences of that prior policy decision, so the continued violations doctrine does to apply. As such, the City denies Councilmember Brekhus's request for an administrative hearing.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,  
*/s/ Brian R. Irvine*  
Brian R. Irvine

BRI/as