

FALLON PAIUTE-SHOSHONE TRIBE



LAW AND ORDER CODE

Title 6

Tribal Elder and Vulnerable Adult Protection

Fallon Paiute-Shoshone Tribe Law & Order Code

LAW & ORDER CODE TITLE 6 TRIBAL ELDER AND VULNERABLE ADULT PROTECTION

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Table of Contents

TITLE 6 – TRIBAL ELDER AND VULNERABLE ADULT PROTECTION		3
6-10-010	Policy	3
6-10-020	Civil Nature of Title	3
6-10-030	Definitions	3
6-10-040	Duty to Report Abuse of Neglect of an Elder or Vulnerable Adult	5
6-10-050	Immunity for Good Faith Reports; Penalties for Bad Faith Reports.	5
6-10-060	Failure to Report; Civil Penalty; Damages	5
6-10-070	Confidentiality and Admissibility of Reports.	6
6-10-080	Initial Reports Made to Tribal Police; Investigation by Tribal Police.	6
6-10-090	Initial Reports Made to Youth and Family Services.	6
6-10-100	Written Intake Report.	6
6-10-110	Investigation	7
6-10-120	Final Written Report.	8
6-10-130	Emergency	8
6-10-140	Rights of Elders, Adults, Their Families and Caretakers	9
6-10-150	Procedures for Determining Capacity, Abuse or Neglect	9
6-10-160	Elder and Vulnerable Adult Protection Order; Term	9
6-10-170	Confidentiality of Reporter, Records, Hearings; Penalties for Non-Compliance	10
6-10-180	Criminal Prosecutions	10

Law and Order Code
TITLE 6
TRIBAL ELDER AND VULNERABLE ADULT PROTECTION

TITLE 6 – TRIBAL ELDER AND VULNERABLE ADULT PROTECTION

6-10-010 Policy

It is the policy of the Fallon Paiute-Shoshone Tribe to hold its elders in high esteem. The elders of our community are the custodians of Tribal history, culture and traditions that are vital to Native culture. It is also the policy of the Fallon Paiute-Shoshone Tribe to protect those vulnerable adults who 18 years of age or older and cannot protect themselves because of mental or physical impairments. This Title shall be liberally construed to affect this policy.

6-10-020 Civil Nature of Title

This Title is civil and does not affect any applicable provisions of the Tribe's Criminal Code unless specifically modified by this Title. The civil investigations and other procedures addressed in this Title may run concurrently with criminal investigations.

6-10-030 Definitions

The following words have the meanings given below when used in this Title:

- (a) "Abuse" is an intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse, exploitation or cruel punishment of an elder or vulnerable adult that results in physical pain or mental anguish. Abuse may be inflicted by relatives, acquaintances, caretakers or anyone with a recognized duty to protect and/or care for an elder or vulnerable adult.
- (b) "Caretaker" means a person who is required by Tribal or State law to provide services or resources to an elder or vulnerable adult; or a person who volunteers to provide services or resources to an elder or vulnerable adult; or an institution or agency and its employees who are required by Tribal, State or 60 years Federal law, or through any other agreement to provide services or resources to an elder or vulnerable adult.
- (c) "Elder" means a person who is of age or older.
- (d) "Emergency" means a situation in which an elder or vulnerable adult is at risk of immediate death or injury, and the elder or vulnerable adult is unable to consent to services to remove the risk.
- (e) "Exploitation" is the improper or unauthorized use of an elder or vulnerable adult's funds, property or other resources. A failure to use an elder or vulnerable adult's funds, property or resources as the elder or adult reasonably desires or for their benefit shall be deemed exploitation.
- (f) "Family" means parent, son, daughter, spouse, grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent; or as determined by Tribal custom.
- (g) "Good faith" means an honest and reasonable belief or purpose, and the lack of intent to defraud.

- (h) “Least restrictive alternative” means whenever it is necessary to protect an elder or vulnerable adult, the least restrictive method of intervention shall be used to protect the freedom and independence of the elder or vulnerable adult; the least restrictive alternative is that environment which is the most like the elder’s or vulnerable adult’s home setting and which is most capable of supporting the protected person’s physical and mental health and emotional being.
- (i) “Neglect” means a failure to provide for the basic needs of an elder or vulnerable adult by not supplying resources, care or supervision required to provide for these basic needs. Neglect also includes: interfering with the delivery of necessary resources and services; or failing to report abuse of an elder or vulnerable person; or failing to provide an elder or vulnerable adult with services or resources to aid in the elder’s or vulnerable adult’s practice of religion, tradition or custom.
- (j) “Party” or “interested party” means the elder, vulnerable adult, family, caretaker, and any other person that has an interest in the welfare of the elder or vulnerable adult. The Court shall have the power to determine who is or is not a party or interested party in any court proceeding.
- (k) “Protective placement” means the placement of an elder or vulnerable adult in a hospital, nursing home, residential care facility, other suitable placement, or transfer from one facility to another with consent of that person or with appropriate legal authority.
- (l) “Protective services” means services provided to an elder or vulnerable adult with consent or by order of appropriate legal authority, which includes but is not limited to: social services, mental and physical health examinations, home and day care, legal assistance, guardianship, case management and any other services consistent with this Title.
- (m) “Retaliation” means intimidating, threatening to cause bodily harm, or causing bodily harm, or causing bodily harm to a reporter or family of a person reporting elder or vulnerable adult abuse or other reports addressed in this Title; causing the reporter or reporter’s family to be terminated, suspended or reprimanded by an employer; or causing property damage to real or personal property belonging to a reporter’s family.
- (n) “Sexual abuse” is physical contact without the consent of an elder or vulnerable adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud; and
- (o) “Substantiated Report” means when there is probable cause to believe that abuse or neglect occurred, after an investigation conducted by a Tribal Law Enforcement Officer or Youth and Family Services employee. The report is sent to the Tribal Prosecutor for further steps to be taken.
- (p) “Tribal custom” means for this Title:
 - (1) The traditional customs of the Tribe where such customs can be discovered with reasonable certainty by meaningful evidence, such as expert witnesses.
 - (2) The Tribal Court shall not consider whether the customs of the Tribe apply unless this issue is raised by one of the parties. It shall be the obligation of the party wishing to benefit by the application of this definition to bring to the attention of the Tribal Court the appropriate Tribal custom and to establish that the custom prevails within the Tribe.
- (q) “Unsubstantiated Report” means when no probable cause exists to believe abuse or neglect occurred, after an investigation.
- (r) “Vulnerable Adult” means an adult who 18 years of age or older and is unable to protect himself/herself from abuse, neglect, exploitation, or physical harm; this includes the inability of the person to make responsible decisions for himself or herself because of mental illness or

deficiency, physical disability or illness, age, or chronic use of alcohol or drugs. The person does not need to be incapacitated to be a vulnerable adult.

- (s) "Youth and Family Services" means the Tribe's Youth and Family Services, or any successor entity thereto.

6-10-040 Duty to Report Abuse of Neglect of an Elder or Vulnerable Adult

- (a) As required by § 5-50-060, suspected abuse or neglect to any elder or vulnerable adult must be reported to Youth and Family Services and/or the Tribal Police by:
- (1) The elder's or vulnerable adult's court appointed guardian or caretaker;
 - (2) Licensed medical provider, including but not limited to physician, physician assistant, nurse, dentist, physical therapist, chiropractor, podiatrist, optometrist, pharmacist, audiologist, psychologist, etc.;
 - (3) Employees of a medical facility who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of an elder or vulnerable adult by a member of the staff of the medical facility;
 - (4) Coroner;
 - (5) A member of the clergy, or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.
 - (6) Social worker;
 - (7) Marriage and family therapist, and clinical professional counselors;
 - (8) Alcohol, drug and family counselors;
 - (9) Any officer or employee of a law enforcement agency or a probation officer;
 - (10) An attorney, except as otherwise provided by applicable law or ethical rules;
 - (11) The members of the Fallon Business Council;
 - (12) Any person or agency, including employees, with fiduciary duties to elders or vulnerable adults such as attorneys, accountants, property managers or financial institutions; and
 - (13) Any Tribal employees who are mandatory reporters as stated in their job descriptions.
- (b) Suspected abuse or neglect as addressed in this Title may also be reported to Youth and Family Services and/or the Tribal Police by:
- (1) The elder or vulnerable adult abused or neglected; or
 - (2) Any other persons who have reason to suspect that an elder or vulnerable adult is abused or neglected.
- (c) Reports addressed in this section are presumed to be made in good faith, which may be rebutted by sufficient evidence otherwise.

6-10-050 Immunity for Good Faith Reports; Penalties for Bad Faith Reports.

Any person making a report which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report. Any person that intentionally makes a false report may be subject to criminal liability under Section 5-60-060.

6-10-060 Failure to Report; Civil Penalty; Damages

Any person required to report who fails to report suspected or actual abuse or neglect as required by this Section 6-10-040 may be subject to a civil fine penalty of up to \$5,000. All persons required to report who fail to report are entitled to petition, notice and an opportunity for hearing in Tribal Court. Fines shall be

assessed only after a determination of a duty to report is found at the hearing, and that the person breached this duty to report. A person failing to report suspected abuse or neglect as addressed in this Title may be subject to suit by or on behalf of injured persons for damages resulting from unreported activity.

6-10-070 Confidentiality and Admissibility of Reports.

- (a) The identity of any person making an initial report of abuse or neglect of an elder or vulnerable adult shall not be disclosed to any person other than the Tribal Court, an employee of the Tribe's Youth and Family Services, Tribal Police, or other state or federal government employee who has a need to know the information in the performance of such employee's duties without the consent of such person.
- (b) Such reports shall not be admissible in evidence in any proceeding under this Title. Information contained in such reports shall not be admissible in any proceeding under this Title unless the reporter is voluntarily and personally present at the proceeding and testifies to personal knowledge of such information. However, any information contained in such report may be admissible in evidence if offered by some witness other than the reporter, and if such evidence is otherwise admissible under the Rules of Evidence of the Tribal Court.

6-10-080 Initial Reports Made to Tribal Police; Investigation by Tribal Police.

- (a) When a Tribal Police officer receives an initial report from any person that reasonably believes an elder or vulnerable adult is abused or neglected, or in the course of his duty believes that an elder or vulnerable adult is abused or neglected, the officer shall immediately notify Youth and Family Services and shall submit a copy of the written intake report required under Section 6-10-100 to Youth and Family Services.
- (b) Where a report of abuse involves an Indian victim or Indian abuser and a preliminary inquiry indicates a criminal violation, the law enforcement agency shall also immediately report the incident to the Federal Bureau of Investigation pursuant to federal law.
- (c) Tribal Police shall accompany and assist Youth and Family Services in investigating reported abuse or neglect cases when requested to do so by Youth and Family Services.

6-10-090 Initial Reports Made to Youth and Family Services.

When a Youth and Family Services employee receives an initial report from any person that knows or suspects that an elder or vulnerable adult is abused or neglected, the employee should as soon as possible notify Tribal Police and then shall submit a copy of the written intake required under Section 6-10-100 to Tribal law enforcement.

6-10-100 Written Intake Report.

Within 36 hours after receiving an initial report that an elder or vulnerable adult is abused or neglected, excluding weekends and holidays, the receiving agency or department shall prepare a written intake report including, but not limited to, the following information:

- (a) the name, address, age, and sex of the elder or vulnerable adult that is the subject of the abuse or neglect;
- (c) the name and address of the elder or vulnerable adult's caretakers or other persons responsible for the elder or vulnerable adult's care;
- (d) the name and address of the alleged perpetrator and their relationship to the elder or vulnerable adult;

- (e) the name and address of the person who made the report including their relationship to the elder or vulnerable adult;
- (f) a brief narrative as to the nature and extent of the elder or vulnerable adult's injuries or circumstances, including but not limited to, any evidence of previous injuries and any previously known or suspected abuse or neglect of the person, and the suspected dates of the abuse or neglect; and
- (g) any other information that might be helpful to the investigation of abuse or neglect, including but not limited to information useful in establishing the cause of any injuries and the identity of the person or persons responsible for any injuries.

6-10-110 Investigation

- (a) Youth and Family Services shall take immediate steps to ensure prompt investigation of any report of elder or vulnerable adult abuse or neglect to determine if there is probable cause to believe that the allegations are true, and to protect the health or welfare of the elder or vulnerable adult.
- (b) The social worker shall investigate the report of abuse or neglect and prepare a written report within 10 days based upon:
 - (1) Personal interviews of the abused, the immediate family and caretaker, suspected abuser, employees of agencies (if involved), and any other person who may have pertinent information; and
 - (2) Medical records and other evidence of abuse; and
 - (3) Assessments of elder or vulnerable adult's living conditions using Tribal standards for housing; and
 - (4) Any other observations, assessments, or documents that may aid in completing an accurate report.
- (c) The written report shall contain:
 - (1) Elder or vulnerable person's name, address or location, telephone number; and
 - (2) Name, address or location, telephone number(s) of the person(s) or agency who is suspected of abuse or neglect under this Title; and
 - (3) The condition of the subject person; and names of witnesses and sufficient information to affect the subpoena power of the court over them; and
 - (4) Name, address or location, telephone number of caretakers; and
 - (5) A description of the acts which are suspected of being abusive or neglectful; and
 - (6) Any other information helpful in establishing abuse, neglect or threat of harm to any person.
- (d) Youth and Family Services shall coordinate its investigation with any other Tribal, federal or state department or agency, including, but not limited to: the Tribal Police Department, Tribal probation officer(s), the F.B.I., the B.I.A., any state or city police departments and any state social service agency. Youth and Family Services is not relieved of its duty to investigate the report of abuse or neglect even if one or more of these departments or agencies is investigating the circumstances surrounding the alleged abused or neglected child.
- (e) If the investigation is being conducted pursuant to an anonymous report, the investigation must within 48 hours develop independent, corroborative information for the investigation to continue. Without the development of independent, corroborative information, an elder or vulnerable adult may not be removed from the home and the investigation must be terminated.

- (f) All completed reports, including any submitted to Youth and Family Services by law enforcement, shall be reviewed by Youth and Family Services to determine if a petition for an elder or vulnerable adult in need of protection is necessary under Section 6-10-160.

6-10-120 Final Written Report.

- (a) Upon completion of the investigation of any report of alleged elder or vulnerable adult abuse or neglect, Youth and Family Services shall prepare a final written report on the allegations.
- (b) If the report reveals probable cause to believe that the elder or vulnerable adult is abused or neglected or is at substantial risk of being abused or neglected, Youth and Family Services shall initiate the procedures outlined in Sections 6-10-130 through 6-10-180 of this Title.

6-10-130 Emergency

- (a) The Court may issue an ex parte emergency protection order authorizing emergency services or protective placement upon a showing satisfactory to the court that an elder or vulnerable adult:
 - (1) Is at risk of immediate physical harm; and
 - (2) No one is authorized by law or court order to give consent; and
 - (3) The elder or vulnerable adult or authorized caretaker is incapacitated and cannot consent to services.
- (b) The emergency protection order shall:
 - (1) Set out the specific emergency services to be provided to remove the emergency; and
 - (2) Allow protective placement only if the evidence indicates that it is absolutely necessary; and
 - (3) Designate the person or agency required to implement the order; and
 - (4) Be issued for up to fourteen days excluding weekends and holidays, and may only be renewed for a maximum of an additional fourteen days if there is evidence of a continuing emergency.
- (c) The Court may issue a warrant for forcible entry by Tribal Law Enforcement if attempts to gain voluntary access have failed.
- (d) The petition for an emergency protection order shall include the name and interest of the petitioner. Also the name, address or location, proposed protective services, attempts to secure consent and any other facts that will assist the Court.
- (e) Emergency protection orders may be set aside by the Court upon written petition of any party showing good cause.
- (f) The Court shall hold a preliminary hearing on a petition to provide protective services within fourteen days after an emergency protection order is issued unless good cause exists to grant a delay. The Court shall state on the record any cause for such delay.
- (g) All parties, including attorneys, are permitted to attend the preliminary hearing for a protection order. The hearing may be done ex parte if the need arises. The sufficiency of the petition will be determined on a totality of circumstances test and goes into effect upon the immediate granting of the order by the Court.
- (h) If there is good cause to believe that an emergency exists and an elder or vulnerable adult is at risk of immediate or irreparable harm, upon personal observation, the investigator or law enforcement officer may immediately protect the elder or vulnerable adult, including transporting him or her to adequate facilities. Immediately after the elder or vulnerable adult is protected, standard procedures for an emergency protection order must be followed.

- (i) Anyone who acts in reasonable good faith pursuant to this section shall be immune from criminal or civil suit if the suspected abuse or neglect results in an unsubstantiated report.

6-10-140 Rights of Elders, Adults, Their Families and Caretakers

- (a) An elder, vulnerable adult, family (who are known and involved with the person) and/or caretaker shall be informed of an investigation under this Title before it begins unless an emergency exists. If an emergency exists, notice must be given using a means reasonably calculated to give actual notice as soon as possible but no later than 72 hours.
- (b) Elders or vulnerable adults may refuse to accept protective services provided there is good cause to believe that the elder or vulnerable adult can take care of themselves and the elder or vulnerable adult knows of the services offered.
- (c) Families or caretakers may refuse services for themselves but cannot refuse services for the elder or vulnerable adult.
- (d) Elders, vulnerable adults, family or caretakers may refuse to allow investigators into their home and should be told of the right of investigator to seek a warrant for entry.
- (e) Personal service of notice to the elder, vulnerable adult, family and caretaker is required when a petition is filed pursuant to this Title.
- (f) The elder, vulnerable adult, family and caretaker have the right to attend all proceedings pertaining to the capacity of the abused unless the Court determines the elder or vulnerable adult's health is at risk in attending such proceedings.
- (g) The elder, vulnerable adult, family and/or caretaker has the right to dispute any evaluation through independent medical, psychological or psychiatric evaluations at their own expense.
- (h) Youth and Family Services and/or law enforcement shall attempt to keep all parties informed of the status of any investigation or case, but only if the disclosures will not harm the investigation/case or will not subject any person to possible retaliation or abuse.

6-10-150 Procedures for Determining Capacity, Abuse or Neglect

The Court shall determine an elder or vulnerable adult's capacity, degree of incapacity, or whether abuse or neglect has occurred based on clear and convincing evidence at a hearing requested in a voluntary proceeding or required at an involuntary proceeding. All parties are entitled to petition, notice and an opportunity to be heard.

6-10-160 Elder and Vulnerable Adult Protection Order; Term

- (a) Any person, including Youth and Family Services, can file a petition seeking an elder or vulnerable adult protection order.
- (b) If the Court determines that there is incapacity or evidence of abuse or neglect of an elder or vulnerable adult, a protection order will be issued which may contain, but is not limited to the following:
 - (1) Removal from the place where abuse or neglect occurs, including the elder or vulnerable adult's home; and
 - (2) Enjoining the abuser from committing further abusive or neglectful acts; and
 - (3) Requiring any party having a fiduciary duty to the elder or vulnerable adult, or any person having possession of any funds or property of the elder or vulnerable adult, to account for the elder or vulnerable adult's funds and/or property; and

- (4) Requiring compensatory damages to be paid by an abuser or neglectful person to the elder or vulnerable adult for injuries resulting from the abuser's or neglectful person's wrongful act(s); and
 - (5) Appointing a representative, guardian ad litem, or recommending a representative payee for the elder or vulnerable adult; and
 - (6) Ordering Youth and Family Services to prepare a plan to deliver protective services which provides the least restrictive alternative to satisfy the elder or vulnerable adult's needs.
- (c) An elder or adult protective order may not exceed 12 months. Extensions for the 12 months following may be obtained in Court by petition, notice and an opportunity for hearing. Extensions may be obtained as many times as necessary if cause is shown by clear and convincing evidence. Review of the need for continued protective orders shall occur every 6 months or upon motion of an interested party as accepted by the Court.
- (d) If further or long term relief is required then any person, including Youth and Family Services, may seek additional relief under Title 12 and Part 12-100.

6-10-170 Confidentiality of Reporter, Records, Hearings; Penalties for Non-Compliance

- (a) The identity of the reporter of abuse, neglect or threat of harm to any person under this Title is confidential and shall not be released unless the reporter consents or the Court determines that the need of the elder or vulnerable adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such disclosure. Any disclosure may be released only to the extent necessary to protect the elder or vulnerable adult.
- (b) Records of investigations concerning abuse, neglect or threat of harm to any person under this Title are confidential. Youth and Family Services, law enforcement, Court officials, and any other person whom the Court determines has reasonable cause to have access may view the record(s).
- (c) Anyone who violates this Section shall be subject to a penalty of a fine of up to \$1,000 per occurrence. Petition, notice and an opportunity for hearing in Tribal Court will determine if a violation has occurred.

6-10-180 Criminal Prosecutions

- (a) Any person(s) who commits abuse or neglect against an elder or vulnerable adult may be criminally prosecuted under applicable provisions of the Law and Order Code.
- (b) Criminal prosecutions may run concurrently with civil proceedings under this Title. Dismissal or deferral of a criminal proceeding in no way affects the applicability of this Title. Factors for the Court to consider when dismissing or deferring criminal proceedings are:
 - (1) The elder, vulnerable adult, family or caretaker and suspected abuser agree to resolve conflicts through any dispute process recognized by the Tribe; and
 - (2) All parties concerned agree to accept services as determined by Youth and Family Services; and
 - (3) The crime is not of a serious nature involving intentional bodily harm or intentional property damage and the accused does not have a prior record of elder, adult, child or sexual abuse.



FALLON PAIUTE-SHOSHONE TRIBE

Resolution No. 19-F-227

BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE-SHOSHONE TRIBE, THE FALLON BUSINESS COUNCIL, THAT:

WHEREAS: the Fallon Business Council ("Council") is the recognized Governing Body of the Fallon Paiute-Shoshone Tribe ("Tribe") and was established to exercise the privileges and powers of self-government, to conserve and develop the Tribe's resources for the social and economic well-being of its members, and to preserve and protect the civil rights of its members; and

WHEREAS: the Fallon Paiute-Shoshone Tribe is federally recognized by the United States Government and the Secretary of the Interior as a Native American Tribe, and by the power vested by the Tribal Constitution and Bylaws pursuant to Article VI – Powers & Duties of the Business Council, Section 1(h), the Business Council has the power "to promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court"; and

WHEREAS: pursuant to this power, the Business Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation and Colony; and

WHEREAS: the Business Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living and working on Tribal lands; and

WHEREAS: to meet this goal, the Business Council recognized a need to adopt laws addressing tribal elder protection so prepared a new Title of the Law and Order Code titled "Tribal Elder and Vulnerable Adult Protection"; and

WHEREAS: the new Title was posted for at least thirty days to allow for public comment, but no comments were received; and

WHEREAS: the posted version is new "Title 6 – Tribal Elder and Vulnerable Adult Protection;"

NOW THEREFORE BE IT RESOLVED the Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe, hereby adopts the new Title 6 – Tribal Elder and Vulnerable Adult Protection of the Tribe's Law and Order Code, which shall go into effect on January 1, 2020; and

BE IT FINALLY RESOLVED that the Fallon Business Council hereby directs that the Tribal Secretary make the new Title 6 – Tribal Elder and Vulnerable Adult

Resolution No. 19-F-227

Protection of the Tribe's Law and Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester.

CERTIFICATION

At a duly held meeting of the seven members of the Governing Body of the Fallon Paiute-Shoshone Tribe, five of which constitute a quorum, there were 6 members present on the 26th day of November, 2019, who **VOTED 5 FOR, 0 AGAINST, and 1 ABSTENTION(S)**, in the adoption of the foregoing resolution, in accordance with the powers vested by the Fallon Paiute-Shoshone Tribe's Constitution and By-Laws.



**Margot Dyer, Secretary
Fallon Business Council**