

# Community Insights

SPRING  
2022

A NEWSLETTER FROM THE COMMON-  
INTEREST COMMUNITIES AND  
CONDOMINIUM HOTELS PROGRAM

DEPARTMENT OF BUSINESS & INDUSTRY  
REAL ESTATE DIVISION



APR/MAY/JUN 2022

A Newsletter from the Common-Interest Communities &  
Condominium Hotels Program

# Community Insights

SPRING EDITION

Department of Business &amp; Industry, Real Estate Division

## Nevada Real Estate Division

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## MESSAGE FROM THE OMBUDSMAN

The first 3 months of 2022 have certainly brought many changes to our state most notably the lifting of the statewide mask mandates by Governor Sisolak. As a result, I, like many of you, have begun to breathe a little easier and relax just a little bit more as the threat of Covid fades into history. We can now turn our attention to the future, and we look forward to what that future holds in store for us. As for the Ombudsman's office, we plan to continue to work for the betterment of the CICCH/HOA communities and improvement of the service and support we provide.

This effort continued March 1<sup>st</sup> when the Commission met and heard public comment on proposed amendments to NAC 116. Those proposals included recommendations regarding the information board members are required to provide to the division on the annual registration form; an expansion and clarification of the fiduciary duties of board members; conforming language on where to obtain a copy of *The Guide*; new and clarifying language regarding the reserve study; proposed increases in the maximum authorized fees associated with the lien and foreclosure processes; adjustments to the Division's investigative authority; the requirements for aspiring community managers to obtain a temporary certificate; the expectations for supervising community managers; regulations authorizing Distance Education Courses for community managers; and new language regarding the definition of, and fine limits for, health and safety violations. The commission voiced their thoughts on each of the proposed changes and the draft proposal

has been returned to the Division for revision and will be presented to the commission at the next meeting in June.

Additionally, as promised last quarter, I have begun attending industry functions in an effort to meet and learn about the different organizations and people that comprise our special industry. In March, I attended the CAI Awards Gala and met some very interesting and professional individuals and now have a better understanding of the important role CAI plays in our communities. I look forward to future opportunities to get out and meet more exceptional people.

Finally, as we transition out of what has come to be known as "the great resignation," many businesses and professions are experiencing personnel shortages as employees take advantage of the growing number of opportunities for promotion and advancement. The Ombudsman's office has not been immune from these shifts in personnel and while we are always saddened to see members of our team leave, we wish them all great success in their future endeavors. During this time of transition, staff at the Ombudsman's office have seamlessly absorbed the responsibilities and tasks of their departed colleagues to ensure our office continues to provide the best possible support to our constituents. While we endeavor to hire qualified replacements to fill the vacant positions, we ask for the public's patience and understanding.

## TREES

<https://www.epa.gov/heatislands/using-trees-and-vegetation-reduce-heat-islands>

As it stands today, the western side of the United States is experiencing a severe drought. While recent legal changes and restrictions have attempted to slow this trend, there is a chance that new legislation could further proliferate the drought cycle if adaptations are not made carefully and in a well thought out manner.

Currently, common-interest communities are being encouraged to remove nonfunctional turfgrass in an effort to reduce water use. While this is a significant first step in the fight to counter severe drought, such a move could potentially lead to hotter temperatures and increased drought if other factors are not simultaneously taken into consideration. It is important to keep in mind that grass and other vegetation keep their surrounding area significantly cooler than rocks, dirt, or concrete, therefore removal of this greenspace may be detrimental if not replaced with a substitute that cools just as well, without requiring the same amount of water.

Trees and plants help cool the environment by providing **shade**, which lowers surface air temperatures. Shaded surfaces can be up to 20 to 45 degrees cooler than the peak temperatures of unshaded materials. Shading further works to lower energy use and costs. When planted in strategic locations, “researchers have found that planting deciduous trees or vines to the west is typically most effective for cooling a building, especially if they shade windows and part of the building’s roof.” Tree shade can reduce air conditioning costs in residential buildings by up to 30% and mature trees can reduce high summer temperatures by 2 to 9 degrees. Likewise, a tree which shields a home from wind and snow can reduce heating costs by 20-50%.

By reducing energy demand, trees and vegetation also decrease the production of associated air pollution and greenhouse gas emissions. At the same time, they remove air pollutants and improve air quality. By providing protection from the sun and reducing airborne pollutants, trees can improve the emotional and physical health of those nearby.

Property values can increase by as much as 20% when trees are present. A home on a lot with mature trees is up to 20% more saleable. They reduce sound/noise, provide visual screening. Improved quality of life: Trees and vegetation provide aesthetic value, habitat for many species, and can reduce noise.

Enhanced stormwater management and water quality: Vegetation reduces runoff and improves water quality by absorbing and filtering rainwater.



Reduced pavement maintenance: Tree shade can slow deterioration of street pavement, decreasing the amount of maintenance needed.

The primary costs associated with planting and maintaining trees or other vegetation include purchasing materials, initial planting, and ongoing maintenance activities such as pruning, pest and disease control, and irrigation. Pruning was often the greatest expenditure, accounting for roughly 25–40% of total annual costs (approximately \$4–\$20/tree). Administration and inspection costs were the next largest expenditure, ranging from approximately 8–35% of annual expenditures (about \$4–\$6/tree). Tree planting, surprisingly, accounted for just 2–15% of total annual urban forestry expenditures (roughly \$0.50–\$4/tree) in these cities.

### Benefits and Costs

Although the benefits of urban forestry can vary considerably by community and tree species, they are almost always higher than the costs. The five-city study discussed above found that, on a per-tree basis, the cities accrued benefits ranging from about \$1.50–\$3.00 for every dollar invested. These cities spent roughly \$15–\$65 annually per tree, with net annual benefits ranging from approximately \$30–\$90 per tree.

More details are available in Chapter Two of EPA’s Reducing Urban Heat Islands: Compendium of Strategies

### Horticultural class —

When proper irrigation system design and management are not provided following turfgrass conversions, decline in tree health, vigor, and aesthetics.

The loss in value due to a dead tree or decline in health of trees as well as the cost of upgrading irrigation systems required to maintain tree health may exceed the monetary

## MAKING CHANGES TO REGULATION

Pursuant to NRS 233B, and to the extent authorized by the Nevada Revised Statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out its functions. Once adopted, an agency's regulations have the force of law.

To assist unit owners in understanding this process, the Ombudsman's Office has decided to briefly outline the steps below.

**BEFORE** adopting any permanent regulation, the agency (NRED in this case) must:

**1. Create** a document of proposed regulation changes.

**2. Conduct a workshop** to solicit comments from the public and from businesses to be affected by the proposed regulation.

- \* The time and place of the workshop must be noticed not less than 15 days before the workshop.
- \* All interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing.

**3. Submit a draft** of proposed regulation to be reviewed and approved by the Legislative Counsel Bureau (LCB).

4. After receiving approved text of the proposed regulation, **schedule a public hearing** on the regulation with at least 30 days' notice of the intended action, including:

- \* The text of the proposed regulation;
- \* The time, place, and manner in which interested persons may present their views regarding the proposed regulation; and
- \* The estimated economic effect of the regulation on business and public, including both adverse and beneficial effects and immediate and long-term effects, the methods used by the agency in determining the business impact, as well as estimated cost to the agency for enforcement of the proposed regulation and an indication as to whether the regulation establishes a new fee or increases an existing fee.

The public hearing cannot be held on the same day as the workshop, and public comment is accepted during both processes. Each workshop and public hearing must be conducted in accordance with the provisions of chapter 241 of NRS. There can be as many of these meetings as necessary for the CICCH Commission (in this case) to adopt final language.

**AFTER** adopting any new permanent regulation, the agency must **submit an informational statement** to the LCB for review by the Legislative Commission to determine whether to approve the regulation. Among other items, this statement includes:

- \* A copy of each regulation adopted and a clear and concise explanation of the need for the adopted regulation;
- \* If adopted without any changes, a summary of the reasons why;
- \* A description of how public comment was solicited, a summary of the public response and an explanation of how other interested persons may obtain a copy of the summary; and
- \* The number of persons and contact information, if provided, for those who:
  - (1) Attended each hearing;
  - (2) Testified at each hearing; and
  - (3) Submitted to the agency written statements.

The Legislative Commission then posts on its website the notice for its own meeting to review adopted regulations, including a list of the regulations to be reviewed. Public comment is again allowed at this meeting, making it at least the third opportunity for those who wish to comment and propose potential revisions to the language. Depending on comments made, this could potentially result in yet another workshop and hearing.

**FINALLY**, the new regulation becomes effective when the Legislative Commission approves it and sends it to the LCB for filing with the Secretary of State.

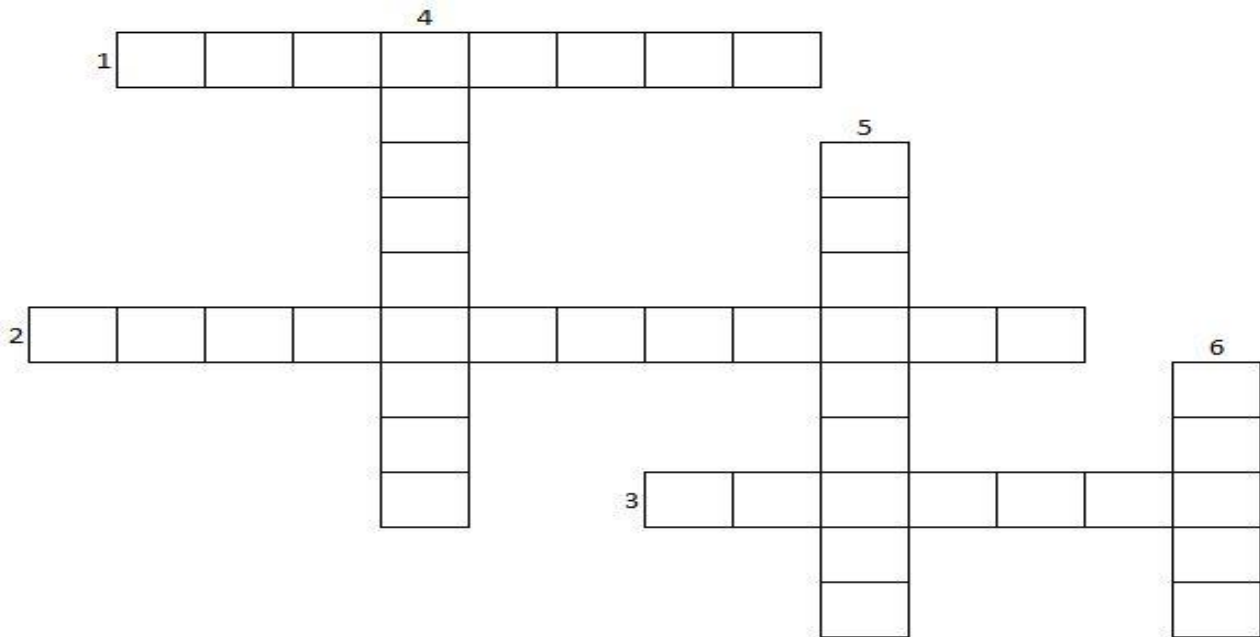
## NEW HIRES TO THE OMBUDSMAN OFFICE

### Administrative Assistant I



Demetra Stuart was hired by the Ombudsman office as an Administrative Assistant I in February of 2022. Demetra recently relocated from California where she worked as a Senior Administrative Assistant for the City of Las Angeles. During her time in LA, she worked for the Department of Water and Power, LAX Airport Police and the Department of Housing. She also worked as a Supervising Program Technician for the California Department of Fish & Game. She brings over 30 years of experience in public service and “hopes to contribute and share some of her experiences and skills” with members of the Ombudsman team. Demetra obtained her Associates Degree from the University of Colorado Technical, she has served as President of her previous HOA in Paramount California and is currently the Treasurer of her HOA in Las Vegas.

## TEST YOUR KNOWLEDGE— CROSSWORD



- 1: Unit Owner meetings must be held at least \_\_\_\_\_. (NRS 116.3108)
- 2: The \_\_\_\_\_ is used to project 30 year maintenance and repair costs of association common elements. (NRS 116.31152)
- 3: Associations shall hold a board meeting at lease once every \_\_\_\_\_. (NRS 116.31083)
- 4: Rules adopted by an association must be \_\_\_\_\_ enforced under the same or similar circumstances. (NRS 116.31065)
- 5: Board members have a \_\_\_\_\_ duty to act in the best interest of the association. (NRS 116.3013)
- 6: Each association board meeting must include a unit owner \_\_\_\_\_ at the beginning and end of each meeting. (NRS 116.31083)

6: FORUM  
3: QUARTER

5: FIDUCIARY  
2: RESERVE STUDY

4: UNIFORMLY  
1: ANNUALLY

## Stats—comparing Southern Nevada with Northern Nevada



Washoe Lake, NV

VS.



Laughlin, NV

	NORTHERN NEVADA	SOUTHERN NEVADA
Total Registered Associations	679	2,876
Registered in 2021	8	86
Communities with 150 or More Units	157	938
Communities with Less Than 150 Units	522	1,938
Comprised of Only Single-Family Homes	329	2,082
Comprised of Only Condo/Townhomes	331	719
Mixed-Use Communities	18	66
Condominium Hotels	1	9
Number of Active Community Managers	156	606
Number of Self-Managed Associations	116	121

## OMBUDSMAN INFORMATION - January through March 2021

Total Associations Registered in the State of Nevada	3,555
Complaints Received	42
Alternative Dispute Resolution (ADR) Filings	60
Associations Reviewed for Possible Audit	50
Training Sessions Conducted	17
Classroom Attendees	280

Main Page: <http://red.nv.gov/>

All forms can be found at:  
<http://red.nv.gov/Content/Forms/All/>

Class calendars can be found at:  
[http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/); and  
<http://red.nv.gov/Content/Education/Calendars/CIC/>

If you have any questions, please email:  
[CICombudsman@red.nv.gov](mailto:CICombudsman@red.nv.gov)

## QUESTIONS FROM OUR CONSTITUENTS

### **Q. Can my HOA require me to submit an ARC request before installing solar energy on my unit and can my HOA deny my request?**

NRS 116.2111(1)(b) states “subject to the provisions of the declaration and other provisions of law, a unit’s owner may not change the appearance of the exterior appearance of a unit without permission of the association.” Therefore, an owner can be required to follow the association’s ARC process prior to installation of a Solar Energy system.

NRS 116 does not address the installation of solar energy, however, NRS 278.0208 does. It states:

1. A governing body shall not adopt an ordinance, regulation or plan or take any other action that prohibits or unreasonably restricts or has the effect of prohibiting or unreasonably restricting the owner of real property from using a system for obtaining solar energy on his or her property.
2. Any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer or sale of, or any other interest in, real property and which prohibits or unreasonably restricts or has the effect of prohibiting or unreasonably restricting the owner of the property from using a system for obtaining solar energy on his or her property is void and unenforceable.
3. For the purposes of this section, the following shall be deemed to be unreasonable restrictions:
  - (a) The placing of a restriction or requirement on the use of a system for obtaining solar energy which decreases the efficiency or performance of the system by more than 10 percent of the amount that was originally specified for the system, as determined by the Director of the Office of Energy, and which does not allow for the use of an alternative system at a substantially comparable cost and with substantially comparable efficiency and performance.
  - (b) The prohibition of a system for obtaining solar energy that uses components painted with black solar glazing.

Therefore, the board may not unreasonably prohibit an owner from installing solar energy on their own property and reasonableness will be judged based on the examples proved in NRS 278.0208(3). A board may require requested solar systems conform with the ARC guidelines so long as those guidelines don’t adversely affect the rated efficiency of the requested solar energy system by more than 10%.

Additionally, NRS 116.3102(1)(f) states, in part, “subject to the provisions of the declaration, the board may regulate the modification of common elements.” If the requested solar energy system is to be installed on a common element or limited common element, as is often the case with condominiums and townhomes, the board’s approval is subject to the terms of each association’s governing documents. Any such approval should clearly identify who will hold the responsibility for maintenance and repair of the solar system and applicable common element or limited common element upon which the solar system will be installed.

In compliance with NAC 116.405(8)(e), the board should consult with their attorney, as needed, prior to denying an owner’s ARC request for installation of a solar energy system.

### **Q. Can my HOA require me to provide an email address to receive association notices and communications?**

SB72 updated NRS 116.31068(1) which now states, “Except as otherwise provided [in NRS 116] unless a unit’s owner opts out of receiving electronic communications or has not designated an electronic mail address, an association shall deliver any notice required to be given by the association under [NRS 116] and any communication from or other information provided by the association to the mailing or electronic mail address a unit’s owner designates.”

This means the owner gets to designate where and how they wish to receive notices unless NRS 116 states otherwise as is the case with notice of violations and ballots for the election of board members.



## NRS 116A.620 Management agreement: Contents

Any management agreement must be in writing, entered into between the client and the community manager or the employer of the community manager if applicable, and signed by all parties. It must include:

The term of the management agreement
The identity and the legal status of the contracting parties
Any limitations on the liability of each contracting party
The physical location, including street address, of the records of the client (must be within 60 miles of the community)
An identification of the types and amounts of insurance coverage to be carried by each contracting party (specific inclusions in subparagraph (k)).
A statement of the manager's scope of work
The services to be provided and the payment schedule
A complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including: <ol style="list-style-type: none"> <li>(1) Costs for any new client or start-up costs;</li> <li>(2) Fees for special or nonroutine services, such as the mailing of collection letters, the recording of liens and foreclosing of property;</li> <li>(3) Reimbursable expenses;</li> <li>(4) Fees for the sale or resale of a unit including opening or closing a file and the portion of fees that are to be retained by the client vs. the community manager</li> </ol>
The frequency and extent of community inspections
Spending limits of the community manager
The extent of authority of the community manager to sign checks on behalf of the client in an operating account
An acknowledgement that all records and books of the client are the property of the client, excluding proprietary information and software belonging to the manager
Provisions for dispute resolution
Grounds and procedures for termination of the manager
<i>Notwithstanding any provision in the agreement to the contrary, a management agreement may be terminated by the client without penalty upon 30 days' notice following a violation by the community manager of any provision of NRS 116 or 116A.</i>



A management agreement may also provide for mandatory binding arbitration and could allow for the provisions of the management agreement to apply month to month following the end of the term. A management agreement **may not**, however, contain an automatic renewal provision.

Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including, without limitation:

- (a) The names and addresses of all insurance companies;
- (b) The total amount of coverage; and
- (c) The amount of any deductible.

After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

Except as otherwise provided in the management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after the termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company.

## WHAT HAPPENED AT COMMISSION?

NAME	ALLEGATIONS/ VIOLATIONS	DISCIPLINARY ACTIONS/ STIPULATIONS
NRED v. Srdjan Pantic <b>Case No. 2019-836</b> <i>Type of Respondent:</i> <i>Board Member</i>	The Commission concluded that the respondent violated: NRS 116.31187(1)(b) by receiving personal profit or compensation by performing services to the association while serving on the board; NRS 116.3103 through NAC 116.405(2) by failing to act in good faith and in the honest belief that his actions are in the best interests of the association by acting for reasons of self-interest and gain; and NRS 116.3103 through NAC 116.405(5)(a) by impeding or otherwise interfering with the Division's investigation by failing to provide requested documents during an investigation.	Respondent shall pay to the Division a total of \$7,465.40, consisting of a fine in the amount of \$4,000, and the Division's attorney fees and costs in the amount of \$3,465.40. The amount due shall be payable to the Division within 60 days of the date of the Order. Respondent shall not serve on any homeowner association's board in the state of Nevada for 10 years from the date of the Order, or until such time that he pays the restitution fine to the homeowners' association, whichever occurs later.
NRED v. Rancho San Juan Homeowners Association, Christopher Seckler, Sebastian Mayo, and Cesar Valdez <b>Case No. 2021-161</b> <i>Type of Respondent:</i> <i>Board Member</i>	Rancho San Juan Homeowners Association is accused of violating NRS 116.3103 (through NAC 116.405(3) by committing incompetence, negligence or gross negligence by allegedly failing to adequately fund the association's reserve account and comply with applicable state laws and regulations. Respondents are further accused of violating NRS 116.3103 by allegedly failing to comply with a request by the Division to provide information or documents. Respondents are also accused of violating NRS 116.31152 by allegedly failing to determine if the association's reserves are sufficient based on the reserve study.	Postponement granted until June 2022 meeting.
NRED v. Rose Garden Owners Association, Gary Martin, Lynne Fillingame, Jeff Hahn, and Barbara Brink <b>Case No. 2020-566</b> <i>Type of Respondent:</i> <i>Board Member</i>	Rose Garden Owners Association was accused of violating NRS 116.3103 (through NAC 116.405(5)) by allegedly failing to act in the best interest of the association by failing to comply with the Division's request for information or documents.	Complaint was withdrawn.
NRED v. Highlands Road Association, Charles A. Lane, Eric Mortara, Cathy Lynch, and Barbara Small <b>Case No. 2021-807</b> <i>Type of Respondent:</i> <i>Board Member</i>	Highlands Road Association is accused of violating NRS 116.31083(5)(a) and NRS 116.31083(8) because they allegedly have never maintained audio recordings of meetings. Highlands Road Association is also accused of violating NRS 116.31151(3) for allegedly failing to establish and properly ratify an annual budget. The association is further accused of violating NRS 116.31175 for allegedly failing to maintain financial statements of the association. Respondents assert they were unaware of their obligations as they believed they were not subject to NRS 116.	Postponement granted until May 2022 meeting.

### Allegations/Stipulations

Stipulations occur when both the respondent and the Division have agreed to conditions reviewed and accepted by both sides. A stipulation may or may not be an admission of guilt.

### Actions/Decisions

Acts of the Commission for Common-Interest Communities and Condominium Hotels are not published until after the 30-day period allowed for filing under Judicial Review. If a stay on discipline is issued by the court, the matter is not published until final outcome of the review.

## Community Insights

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### *Nevada Real Estate Division Mission*

*To protect the public and Nevada's real estate sectors by fairly and effectively regulating real estate professionals through licensure, registration, education and enforcement.*

### *Office of the Ombudsman Mission*

*To provide a neutral and fair venue to assist homeowners, board members and community managers in handling issues that may arise while living in a common-interest community or condominium hotel.*

*Community Insights is an official publication of the*

### **STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY**

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*Director*

### **REAL ESTATE DIVISION**

**Sharath Chandra**  
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**Charvez Foger**  
*Deputy Administrator*

### **COMMON-INTEREST COMMUNITIES & CONDOMINIUM HOTELS**

**Office of the Ombudsman**  
**Jason O. Wyatt**  
*Ombudsman*

### **COMMISSION FOR COMMON-INTEREST COMMUNITIES & CONDOMINIUM HOTELS**

**Michael Burke, Esq., Chairman**  
*Attorney Member*

**Charles Niggemeyer, Vice-Chairman**  
*Homeowner Member*

**Richard Layton, CPA, Secretary**  
*Certified Public Accountant Member*

**James Bruner, Commissioner**  
*Developer Member*

**Phyllis Tomasso, Commissioner**  
*Homeowner Member*

**Patricia Morse Jarman, Commissioner**  
*Homeowner Member*

**Tonya Gale, Commissioner**  
*Community Manager Member*

### **2022 CIC COMMISSION MEETINGS**

May 31, 2022  
September 13, 2022  
December 6, 2022

**Further details located at:**

**[http://red.nv.gov/Content/Meetings/CIC\\_Calendar/](http://red.nv.gov/Content/Meetings/CIC_Calendar/)**

### Upcoming Holidays:

**Memorial Day**—Monday, May 30, 2022  
**Independence Day**—Monday, July 4, 2022  
**Labor Day**—Monday, September 5, 2022

