

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

WASTE MANAGEMENT OF NEVADA,  
INC.,  
Appellant,  
vs.  
WEST TAYLOR STREET, LLC, A LIMITED  
LIABILITY COMPANY,  
Respondent

No. 74876

Electronically Filed  
Jan 22 2018 02:57 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT  
CIVIL APPEALS**

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District 2 Department 4  
County Washoe Judge Honorable Connie Steinheimer  
District Ct. Case No. CV12-02995

**2. Attorney filing this docketing statement:**

Attorney Mark G. Simons Telephone (775) 329-3151  
Firm Robison, Simons, Sharp & Brust  
Address 71 Washington Street  
Reno, Nevada 89503

Client(s) Waste Management of Nevada, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney C. Nicholas Pereos Telephone (775) 329-0678  
Firm C. Nicholas Pereos, Ltd.  
Address 1610 Meadowood Lane, #202  
Reno, Nevada 89502

Client(s) West Taylor Street, LLC

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Waste Management of Nevada v. Second Judicial District Court, No. 70540 (writ petition denied)

Waste Management of Nevada v. West Taylor Street, No. 69307 (appeal voluntarily dismissed)

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None known.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

West Taylor Street sued Waste Management for violation of the garbage lien statutes and slander of title after Waste Management filed garbage liens against West Taylor's property for unpaid garbage fees. The district court granted summary judgment on West Taylor Street's first claim for relief and found that Waste Management is required to comply with the notice and foreclosure provisions of NRS Chapter 108 when filing a garbage lien under NRS 444.520. Following this ruling (and the above appellate proceedings), West Taylor voluntarily dismissed its slander of title claim. Waste Management now appeals.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the District Court erred in holding NRS 444.520 required the incorporation of all procedural requirements set forth in the statutes relating to mechanics' liens in NRS Chapter 108 and not just the single foreclosure statute specifically referred to in NRS 444.520?
2. Whether the District Court erred in imposing a two-year limitation period on foreclosure proceedings brought under NRS 444.520(3) even though that statute grants a perpetual lien?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This Court has never interpreted NRS 444.520. The District Court's interpretation expands the statute to include provisions specifically omitted by the Legislature. If the decision is allowed to stand, garbage collection services statewide will be impacted and fees may need to be raised to comply with the additional procedural requirements.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17, none of the issues raised are presumptively assigned to the Court of Appeals. Because this appeal raises a substantial issue of first impression, it warrants the Nevada Supreme Court retaining the case.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** January 8, 2018.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** January 8, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** January 8, 2018.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Notice of entry of the Final judgment of all claims was entered on January 8, 2018, rendering it an appealable judgment under NRAP 3A(b)(1).



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

West Taylor Street, LLC

Waste Management of Nevada, Inc.

Karen Gonzales

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Karen Gonzales was formally dismissed from the underlying case.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

West Taylor Street: (1) violation of NRS 444.520, resolved October 1, 2015; (2) slander of title, dismissed.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Waste Management of Nevada, inc.


Name of appellant

Date

1/22/18

Mark G. Simons

Name of counsel of record



Signature of counsel of record

Nevada, Washoe

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 22nd day of January, 2018, I served a copy of this completed docketing statement upon all counsel of record:

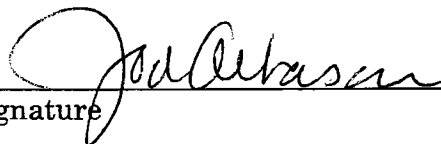
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

C. Nicholas Pereos, Esq.  
1610 Meadow Wood Lane, Ste. 202  
Reno, NV 89502

Dated this 22nd day of January, 2018

Signature



## EXHIBIT LIST

NO	DESCRIPTION	PAGES
1	Second Amended Complaint	7
2	7/28/14 Order	20
3	6/22/16 Notice of Entry of Judgment/Order	24
4	2/6/15 Order Denying Defendants' Motion for Partial Reconsideration	4
5	6/22/16 Notice of Entry of Judgment/Order (2)	8
6	10/1/15 Partial Summary Judgment	3
7	12/3/15 Notice of Entry of Order	7
8	12/29/17 Judgment	2
9	1/8/18 Notice of Entry of Judgment	6

**EXHIBIT 1**

**EXHIBIT 1**

CV12-02995  
WEST TAYLOR STREET VS WASTE  
District Court 06/27/2014 02:41 PM  
Washoe County  
1090  
DOC  
MELWOOD

ORIGINAL

FILED

2014 JUN 27 PM 2:41

JOEY L. HASTINGS  
CLERK OF THE COURT  
BY *[Signature]*  
DEPUTY

1 CODE: 1090  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678

7 ATTORNEYS FOR PLAINTIFF

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

10 \*\*\*\*\*

11 WEST TAYLOR STREET, LLC,  
12 a limited liability company,  
13 Plaintiff,

Case No. CV12-02995  
Dept. No. 4

14 vs.

15 WASTE MANAGEMENT OF NEVADA,  
16 INC., KAREN GONZALEZ, and  
17 DOES 1 THROUGH 10,  
18 Defendants.

19 **SECOND AMENDED COMPLAINT**

20 Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas  
21 Pereos, complains of Defendants, and each of them, and for a claim for relief avers as  
22 follows:

23 **FIRST CLAIM FOR RELIEF**

24 I

25 Defendants DOES 1 through DOES 10 are sued herein as fictitious names because  
26 their true names and capacities of said Defendants are not now known by Plaintiff and  
27 Plaintiff will ask leave to amend the Complaint when it becomes known by it.

28 ///

1 II

2 At all times herein mentioned, Defendants are agents and employees of the  
3 remaining Defendants in each of them acting in the course of scope of said agency and  
4 employment.

5 III

6 At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability  
7 company doing business in the State of Nevada and owns that certain real property located  
8 at 345 and 347 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel  
9 Number 011-266-17.

10 IV

11 On or about the 23<sup>rd</sup> day of February, 2012, Defendants did cause to record a notice  
12 of lien for garbage fees under Document No. 4086834 at the Washoe County Records  
13 Office, Reno, Nevada. On or about November 26, 2012, Defendant did cause to record  
14 a notice of lien for garbage fees under Document No. 4177148 at the Washoe County  
15 Records Office, Reno, Nevada. On or about March 14, 2014, Defendant did cause to  
16 record a notice of lien for garbage fees under Document No. 4334435 at the Washoe  
17 County Records Office, Reno, Nevada. Plaintiff is informed and believes and thereon  
18 alleges that Defendant will continue to cause to record liens with regard to the properties  
19 at 345 and 347 West Taylor Street and that said liens will be the subject of claims set forth  
20 herein.

21 V

22 Subsequent to the recording of these early liens, Plaintiff made repeated demands  
23 upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage  
24 fees to which Defendant alleges monies to be due.

25 VI

26 On or about November, 2012, Defendants sent corroborative information concerning  
27 the basis for the subject lien at which point in time, Plaintiff responded by providing  
28 Defendant an accounting of payments that were made that were purportedly the basis for

1 the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of  
2 the lien given its incorrect filing and Defendants refuses to release the subject lien.

3 VII

4 On or about November 15, 2012, Defendants caused to send to Plaintiff a notice  
5 of intent to lien for a different amount on the subject property notwithstanding the earlier  
6 lien.

7 VIII

8 Plaintiff is informed and believes and thereon alleges that the basis for any lien  
9 against the subject property is by reason of Nevada Revised Statute 444.520.

10 IX

11 Pursuant to NRS 444.520, any lien against the subject property was to be  
12 foreclosed consistent with foreclosure of mechanic's lien.

13 X

14 At all times herein mentioned, the recording of the subject liens referenced  
15 hereinabove was improper and Defendant continued to record liens for purposes of  
16 recognizing the improper nature of its liens previously filed.

17 XI

18 At no time has Defendant undertaken a foreclosure of any lien pursuant to the  
19 mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court  
20 decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's  
21 property.

22 XII

23 Plaintiff has been required to employ the services of an attorney to file and  
24 prosecute this action and is entitled to an allowance of attorneys fees as special damages  
25 by reason thereof.

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Adopt by reference and make a part hereof each and all of the statements and averments contained in the First Claim for Relief hereinabove.

At all times herein mentioned, the basis for the recording of any lien for garbage fees arises by reason of statutory edict. Plaintiff is informed and believes that said statutory scheme does not provide for an opportunity to contest the legitimacy of the recording of the lien or any opportunity to be heard by the lien debtor and no mechanism for commencement of a dispute resolution concerning the lien or the amount of the lien.

The subject statutory scheme of NRS 444.520 mandates service of a notice of lien but does not provide for any mechanism by which there is an opportunity to be heard by the owner of the property, the opportunity to contest the legitimacy of the lien by the owner of the property, or an obligation of the lien claimant a methodology for dispute resolution to an impartial tribunal by reason of the recording of the notice of lien.

Should this Court determine that there is no obligation by Defendant to conform to the mechanic lien laws for the foreclosure of said lien as dictated in the statute of Nevada mandating the commencement of a lawsuit within six months of the recording of the lien, then the recording of said lien deprives Plaintiff of its property by due process of law and the subject statute is unconstitutional according to Constitution of the State of Nevada and these United States.

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Adopt by reference and make a part hereof each and all of the statements and averments contained in the First Claim for Relief hereinabove.

///

1 II

2 At all times herein mentioned, Defendants knew or should have known that the  
3 recording of the subject lien was without basis or merit and that the recording would impact  
4 and impair Plaintiff's ownership of the property. Defendant continues to record liens  
5 against the subject property by reason of the impropriety of the recording of earlier liens.  
6 Plaintiff is informed and believes that Defendant will continue to record liens against the  
7 subject property.

8 III

9 At all time herein mentioned, Defendants have caused to slander Plaintiff's title to  
10 said property and each recording of the lien constitutes a separate act of slander  
11 proximately causing the damages mentioned herein. Plaintiff submits that all future  
12 recordings of liens against the subject property constitute a separate act of slander and  
13 Plaintiff will ask leave to amend this complaint at the time of trial to show each separate  
14 act of slander.

15 IV

16 As a proximate result of the foregoing, Plaintiff has sustained special damages  
17 consisting of attorney's fees for purposes of removing the slanderous document from  
18 Plaintiff's title ownership for an amount in excess of \$40,000.

19 V

20 As a proximate result of the foregoing, Plaintiff has sustained general damages in  
21 a sum in excess of \$40,000.

22 VI

23 Plaintiff has been required to employ the services of an attorney to file and  
24 prosecute this action and is entitled to special damages by reason of the same.

25 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them,  
26 as follows:

- 27 1. For general damages in a sum in excess of Forty Thousand Dollars  
28 (\$40,000.00).

1           2.     For special damages consisting of attorney's fees for a sum in excess of  
2     Forty Thousand Dollars (\$40,000.00).

3           3.     For costs of suit herein.

4           4.     For reasonable attorneys fees herein.

5           5.     For such other and further relief as may be just and proper.

6           6.     For a declaration from this Court that Plaintiff was required to comply with  
7     mechanic lien laws in connection with the recording of the subject lien referenced herein.

8           7.     Alternatively, for a ruling from this Court that the subject statute is  
9     unconstitutional.

10           The undersigned affirms that the foregoing pleading does not contain a social  
11     security number.

12     DATED this 26 day of June, 2014.

C. NICHOLAS PEREOS, LTD.

By: 

C. NICHOLAS PEREOS, ESQ.  
1610 MEADOW WOOD LANE  
RENO, NV 89502  
ATTORNEY FOR PLAINTIFF

17     C:\Shared\CLIENTS\Waste Management\Pleading\Complaint 2nd Amended.wpd

**CERTIFICATE OF SERVICE BY MAIL**

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert  
Bryan L. Wright  
HOLLAND & HART  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134  
702/669-4600  
Attorneys for Waste Management of  
Nevada, Inc. and Karen Gonzales

DATED: 6-26-14

  
Sandra Martinez

**EXHIBIT 2**

**EXHIBIT 2**

3100

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

WEST TAYLOR STREET, LLC, a limited  
liability company,

Plaintiff,

v.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and DOES 1  
through 10,

Defendants.

Case No. CV12-02995

Department No.: 4

**ORDER**

On March 11, 2014, Plaintiff West Taylor Street, LLC (hereinafter, "West Taylor"), by and through its attorney, C. Nicholas Pereos, Esq. filed *Motion for Partial Summary Judgment*, and two affidavits in support of the Motion for Partial Summary Judgment: *Affidavit of C. Nicholas Pereos* and *Affidavit of Teri Morrison*. On March 28, 2014, Defendants Waste Management of Nevada, Inc. and Karen Gonzalez (hereinafter collectively, "Waste Management"), by and through their attorney, Gregory S. Gilbert, Esq., Bryan L. Wright, Esq., and Matthew B. Hippler, Esq. of Holland & Hart LLP, filed their *Opposition to Plaintiff's Motion for Partial Summary Judgment*. On April 11, 2014, West Taylor filed its *Reply Argument in Support of Motion for Partial Summary Judgment*, and submitted the matter to the Court.

On May 7, 2014, Nicholas Pereos, Esq. appeared on behalf of West Taylor, and Bryan Wright, Esq. appeared on behalf of Waste Management. The Court heard arguments concerning

1 the *Motion for Partial Summary Judgment*. At the conclusion of the oral arguments the Court  
2 took the motion under consideration.

3 NRCP 56(c) provides, that summary judgment "shall be rendered forthwith if the  
4 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
5 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving  
6 party is entitled to a judgment as a matter of law." The District Court is to exercise great caution  
7 in granting summary judgment. Posadas v. City of Reno, 109 Nev. 448, 452 (1993). "The party  
8 moving for summary judgment bears the initial burden of production to show the absence of a  
9 genuine issue of material fact." Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602  
10 (2007). "If such a showing is made, then the party opposing summary judgment assumes a  
11 burden of production to show the existence of a genuine issue of material fact." Id.

12 West Taylor moves for partial summary judgment or in the alternative it moves for the  
13 Court to dismiss Defendant's answer to the complaint and enter judgment on liability from lack  
14 of standing to record the garbage lien. West Taylor advances four arguments: 1) Waste  
15 Management does not have standing to record a garbage lien; 2) the statutory formalities  
16 required for mechanic's liens apply to garbage liens because NRS 444.520 incorporates the  
17 entire mechanic's lien statutory scheme; 3) a statute of limitations applies to this case; and 4) that  
18 the lien should not exist in perpetuity after it has been recorded.

19 Waste Management argues that it has standing to record a garbage lien because Waste  
20 Management acquired Reno Disposal Co., which is the waste management company that  
21 contracted with the city of Reno.<sup>1</sup> Waste Management also argues that NRS 444.520, expressly  
22

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23 <sup>1</sup> As a preliminary matter, the Court finds that Waste Management has standing to record  
24 a garbage lien. NRS 444.520 provides that the governing body of any municipality which has an  
25 approved plan for the management of solid waste may, by ordinance, provide for the levy and  
26 collection of fees, and until paid, any fee or charge levied constitutes a perpetual lien. In the  
27 instant matter, Waste Management provided a copy of the *1994 First Amended City of Reno*  
28 *Garbage Franchise Agreement* which was entered into by the City of Reno and Reno Disposal  
Co.. Additionally, an affidavit by David Stratton, Vice President and Assistant Secretary for  
Waste Management of Nevada, Inc., was filed, stating that around June 1, 2008, Waste  
Management acquired Reno Disposal Co.. Waste Management also provided a letter from  
Waste Management to the City of Reno, which extended the 1994 contract for an additional 15  
years. Finally, Waste Management filed a copy of the *Exclusive Franchise Agreement*  
*Residential Solid Waste and Recyclable Materials* that was signed in 2012 by the City of Reno

1 states that garbage liens *may* be foreclosed in the same manner as a mechanic's lien, but that the  
2 language is permissive and not required; therefore, Waste Management followed proper  
3 procedure when filing the garbage lien. Furthermore, it argues that the language of NRS. 444.520  
4 specifically creates a garbage lien that exists in perpetuity if the amount in arrears is not paid.

5 Neither party argues that there is a question of material fact, therefore the Court will  
6 decide the pending questions as a matter of law. The Court will first summarize briefly the  
7 history of the solid waste management system and NRS 444.520, and consider the development  
8 of the mechanic's lien statutes before addressing the substantive issues in this case.

9 *I. History of NRS 444.520 and the Solid Waste Management System*

10 The legislature initially became concerned with public health in 1893. On March 6, 1893,  
11 the Nevada Legislature enacted a statute that required the establishment of a State Board of  
12 Health, and instructed the Board to work for the life and health of the inhabitants of the State.  
13 Laws 1893, p. 117 c. 112. Specifically, the Board was required to conduct sanitary  
14 investigations and inquiries regarding the causes of diseases and methods of prevention. This  
15 included research to determine how habitats and circumstances of life impact public health. *Id.*  
16 The Board was given the authority to make regulations for the "better preservation of the public  
17 health in contagious and epidemic diseases" and if someone was in violation of these regulations  
18 they were notified in writing. If the violator failed to comply within five days of receiving  
19 notice, the individual was deemed guilty of a misdemeanor and fined between \$100-\$500 or  
20 imprisoned in the county jail for 50 -250 days. *Id.* In 1911, the Legislature enacted a second bill  
21 that created a State Board of Health focused primarily on identifying and recording the cause of  
22 death and the requirements for birth certificates. 1911 Nev. Stat. 392.

23 In 1971, Senate Bill 490 (hereinafter, "S.B. 490") was proposed to establish a solid waste  
24 management system. It provided the governing body of a municipality, in conjunction with the  
25 District Board of Health, with the authority to make rules and regulations regarding the  
26

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27 and Reno Disposal Co., which expires in 2029. Based on these undisputed contracts, the Court  
28 finds that Waste Management had standing to record a lien under NRS 444.520 if West Taylor  
was delinquent on its garbage bills.



1 management of solid waste. Assembly Committee on Environmental and Public Resources  
2 (March 31, 1971). After the first read in the Senate, S.B. 490 was amended to include the  
3 following environmental goals: 1) protect public health and welfare; 2) prevent water or air  
4 pollution; 3) prevent the spread of disease and the creation of nuisances; 4) conserve natural  
5 resources; and, 5) enhance the beauty and quality of the environment. Journal of the Senate, at  
6 bate stamp 7 (March 22, 1971).

7 In the development of S.B. 490, the legislative history reveals that the intent behind this  
8 bill was to force the Nevada Department of Health to exercise its preexisting power to regulate  
9 the disposal of solid waste. Assembly Committee on Environmental and Public Resources  
10 (March 31, 1971). On April 1, 1971, there was a second discussion stating, in part, that S.B. 490  
11 was intended to clean up the dumps, and that it did not apply to private property or agricultural  
12 waste disposed on private land, unless a nuisance is being created. Assembly Committee on  
13 Environmental and Public Resources (April 1, 1971). The goal was to create a statewide scheme  
14 so that Nevada could qualify for federal funding. Id.

15 On February 8, 1991, Assembly Bill 320 (hereinafter, "A.B. 320") was proposed as an  
16 effort to create a basic recycling program and to reduce the disposal of certain kinds of solid  
17 waste. The first version of A.B. 320, Sec. 19 (NRS 444.520) imposed a fee for the disposal of  
18 solid waste, stating: "there is hereby levied upon the operator of each disposal site a fee of \$2.50  
19 per ton of solid waste accepted for disposal or transfer at the site...All claims against the account  
20 must be paid as other claims against the state are paid." A.B. 320 (Feb. 8, 1991). Assembly  
21 Member Vivian Freeman, who introduced the bill, indicated that the intended effects of this fee  
22 were threefold: 1) revenues would help fund recycling programs, 2) the charges would be more  
23 reflective of the cost of running a landfill and would assist in funding landfill operations, and 3)  
24 the higher disposal rates could have provided a cost incentive that promotes recycling because  
25 residents paying for the quantity of garbage being disposed would be more likely to remove  
26 recyclable materials. Assembly Bill Omnibus Recycling, Assemblywoman Vivian L. Freeman,  
27 Assembly Committee on Natural Resources, Agriculture and Mining (March 4, 1991). During a  
28 committee meeting it was agreed that the \$2.50 fee was excessive, and needed to be eliminated

1 and re-evaluated after two years. Assembly Committee on Natural Resources, Committee  
2 Analysis of A.B. 320, at 11 (April 6, 1991). After two amendments, A.B. 320 read as follows:

3 "The governing body of any municipality which has an approved plan for  
4 the management of solid waste may, by ordinance, provide for the levy and  
5 collection of other or additional fees and charges and require such licenses  
6 as may be appropriate and necessary to meet the requirements of NRS  
7 444.460, inclusive. The fees authorized by this section are not subject to  
8 the limit on the maximum allowable revenue from fees established  
9 pursuant to NRS 354.5989."

A.B. 320 Reprint with Adopted Amendments, at 6 (May 24,  
1991)(emphasis added).

9 It had been determined that NRS 354.5989<sup>2</sup> would be the only statute to place a fee limitation on  
10 the proposed garbage fees. Therefore, the legislature specifically made A.B. 320 exempt from  
11 NRS 354.5989 through this amendment. These 1991 amendments are still reflected in the statute  
12 today.

13 In 2005, NRS 444.520 was amended again to create a method of recourse for the garbage  
14 company once a customer became delinquent on a bill by allowing the garbage company to place  
15 a lien on the property. Senate Committee on Health and Human Resources, Committee Analysis  
16 of S.B. 354, at 10-11 (April 6, 2005).

17 This amendment added the following language in bold:

18 1. The governing body of any municipality which has an approved  
19 plan for the management of solid waste may, by ordinance, provide for the  
20 levy and collection of other or additional fees and charges and require such  
21 licenses as may be appropriate and necessary to meet the requirements of  
22 NRS 444.460 to 444.610, inclusive.

23 2. The fees authorized by this section are not subject to the limit on  
24 the maximum allowable revenue from fees established pursuant to NRS  
25 354.5989.

26 3. **Until paid, any fee or charge levied pursuant to subsection 1**  
27 **constitutes a perpetual lien against the property served, superior to all**  
28 **liens, claims and titles other than liens for general taxes and special**  
**assessments. The lien is not extinguished by the sale of any property on**  
**account of nonpayment of any other lien, claim or title, except liens for**  
**general taxes and special assessments. The lien may be foreclosed in the**  
**same manner as provided for the foreclosure of mechanics' liens.**

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<sup>2</sup> NRS 354.5989 regulates local government imposed fees for business licenses.

1           4. As a remedy established for the collection of any fee or charge  
2           levied pursuant to subsection 1, an action may be brought in the name  
3           of the governing body of the municipality in any court of competent  
4           jurisdiction against any person who occupied the property when the  
5           service was rendered or against any person guaranteeing payment of  
6           the fee or charge, or against all persons, for the collection of any such  
7           fee or charge that is delinquent.

8           5. A lien against the property served is not effective until a  
9           notice of the lien, separately prepared for each lot affected, is:

10          (a) Mailed to the last known owner at the owner's last known  
11          address according to the records of the county in which the property is  
12          located;

13          (b) Delivered to the office of the county recorder of the county in  
14          which the property is located;

15          (c) Recorded by the county recorder in a book kept for the  
16          purpose of recording instruments encumbering land; and

17          (d) Indexed in the real estate index as deeds and other  
18          conveyances are required by law to be indexed.

19          Senate Bill 354 (March 25, 2005).

20          The Senate Committee discussed that because of public health concerns the garbage company  
21          is required to pick up all garbage, even if a customer's account is in arrears. Id. The proposed  
22          amendments would require the homeowner to address the garbage lien, even if a tenant was  
23          living on the premises. Id. Ultimately, the Senate Committee decided to omit the following  
24          language from S.B. 354:

25                "As a remedy established for the collection of any fee or charge levied  
26                pursuant to subsection 1, an action may be brought in the name of the  
27                governing body of the municipality in any court of competent jurisdiction  
28                against any person who occupied the property when the service was  
                  rendered or against any person guaranteeing payment of the fee or charge,  
                  or against all persons, for the collection of any such fee or charge that is  
                  delinquent."

              The only explanation for this deletion was that the purposed amendment added "some  
unnecessary language." Id.

              When the Assembly Committee discussed A.B. 354, it recognized that the bill allowed  
the garbage company to create a lien that could ultimately lead to the foreclosure of residential  
homes. Assembly Committee on Health and Human Resources, Committee Analysis of A.B.

1 354, at 12-13 (May 20, 2005). Jennifer Lazovich (hereinafter, "Lazovich"), Legislative Advocate  
2 representing the garbage company, Republic Services, Inc., indicated that the garbage lien  
3 process had two steps: first, it requires that a notice of an intent to lien be issued. Id. The second  
4 step, if the garbage bill remains unpaid, is to record the lien with the county. This lien will be  
5 removed off the county's record once it has been paid. Lazovich also indicated that the lien  
6 "operates in the same way as a mechanic's lien" which could ultimately end in a foreclosure.  
7 However she followed this remark by stating that Republic Services, Inc. had never taken this  
8 extreme step and never would. Id. The legislative history did not discuss the applicability of the  
9 mechanic's lien statutes any further.

10 Finally, the Senate Committee discussed that if renters live in a home, the homeowner  
11 must take precautionary steps and have the garbage bill sent to the homeowner's residence  
12 instead of the rental. Id. This will allow the homeowner to pay the garbage bill and ensure that a  
13 lien is not placed on the property, then the homeowner can recover the money by incorporating  
14 the garbage bill into the price of the rent. Id.

## 15 *II. Procedural History of NRS 108 Mechanic's Liens*

16 Of importance to the Court is the legislative intent surrounding the inception and  
17 development of NRS Chapter 108, the mechanic's lien statutes. NRS Chapter 108 contains sixty-  
18 two individual statutes, many of which provide definitions. The Court has considered the  
19 implementation and development of those statutes pertaining to the requirements for perfecting a  
20 mechanic's lien, providing notice of the lien, the duration of the lien, and avenues available to  
21 refute a lien.<sup>3</sup>

22 On February 2, 1965, Assembly Bill 236 (hereinafter, "A.B. 236") was proposed in order  
23 to add mechanic's liens to the statutory liens found in NRS Chapter 108. After reviewing the bill  
24 the Assembly Committee sought to expand the breadth of the mechanic's lien to sufficiently  
25 cover the entire construction industry. Assembly Committee on Judiciary, Committee Analysis

26  
27 <sup>3</sup> Specifically, the Court has analyzed the legislative history for NRS 108.226, NRS  
28 108.227, NRS 108.2275, NRS 108.233, and NRS 108.245. Amendments were made to these  
statutes in the following years: 1967, 1969, 1971, 1979, 1987, 1995, 1997, 2003, 2005, and 2007.  
The Court considers all of these amendments and their legislative history.

1 of A.B. 236 at 1-4 (Feb. 16, 1965). The Assembly Committee was also concerned with the  
2 fairness of the lien process, focusing on the timing in which a lien could be obtained, the  
3 explanatory details that should be contained in the lien to allow the lien party to refute the lien,  
4 the time needed to properly notice a lien, and how a lien would apply to multiple properties like  
5 tract homes. Id. The Assembly Committee also discussed the importance of creating a bill that  
6 protects both the homeowner and the contractor. Id.

7 The Assembly Committee discussed amendments to A.B. 236, and adopted Oregon law  
8 which stated that a lien is not established unless there is proper notice of the lien, and then it  
9 specified the lien requirements. Assembly Committee on Judiciary, Committee Analysis of A.B.  
10 236 at 90-92 (March 2, 1965). Discussion also ensued regarding whether notice of a lien should  
11 be provided without recording the lien, and the Assembly Committee decided to call Oregon  
12 officials to inquire as to the procedures implemented there. Assembly Committee on Judiciary,  
13 Committee Analysis of A.B. 236 at 147-49 (March 15, 1965). The Assembly Committee  
14 ultimately gave A.B. 236 to the Senate with the intent to add language constructed from Oregon  
15 law in the future. This language would require that notice be sent to the owner by material  
16 suppliers, but did not require the notice to be recorded. Assembly Committee on Judiciary,  
17 Committee Analysis of A.B. 236 at 151 (March 16, 1965). The Senate Committee subsequently  
18 reviewed and amended A.B. 236, but no minutes are available from this committee. The  
19 amendments made by the Senate Committee added language governing the assignment of a lien  
20 and instituted a 20 day timeline for laborers to provide the owner of the property with notice of  
21 materials supplied, work performed, or services rendered. *Journal of the Senate* (March 3,  
22 1965).

23 In 1987, Assembly Bill 220 (hereinafter, "A.B. 220") was introduced in response to a  
24 1982 Supreme Court ruling which found that the mechanic's lien statutes denied the contractor  
25 or subcontractor the recovery of profits and overhead. Senate Committee on Judiciary,  
26 Committee Analysis of A.B. 343 at 901-03 (March 19, 1979). The mechanic's lien statutes were  
27 amended to allow the contractor or subcontractor to recover the terms of the contract and in the  
28 absence of a contract to recover for materials, labor, and the fair market value of profits and

1 overhead. Id. The legislature discussed that this amendment prevent the homeowner for  
2 receiving a windfall by only having to pay for materials and labor in the absence of a contract.  
3 Id.

4 In 1995, the legislature proposed a major amendment to the mechanic's lien with Senate  
5 Bill 401 (hereinafter, "S.B. 401"). S.B. 401, in part, added an amendment that allowed a party  
6 with interest in the premises in which a lien has been filed to appear before the court to assert  
7 that the lien was frivolous or excessive. Senate Committee on Judiciary, Committee Analysis of  
8 A.B. 343 at 2-10, bate stamp 2613-21 (May 23, 1995). During the Senate hearing it was  
9 discussed that the amendments were intended to be good for all parties. Id. The legislature  
10 acknowledge that there was a need to speed up the mechanic's lien process, but it also did not  
11 want to do so to the detriment of any due process rights.<sup>4</sup>

12  
13 **III. Procedural requirements found in the mechanic's lien statutes may be**  
14 **applied to a garbage lien when NRS 444.520 is silent on an issue.**

15 The extent to which the mechanic's lien statutes are incorporated into NRS 444.520 is a  
16 matter of first impression. To determine the interplay between NRS Chapter 108 and NRS  
17 444.520 the Court must interpret NRS 444.520. Words of "a statute should be given their plain  
18 meaning." McKay v. Bd. of Supervisors, 102 Nev. 644, 648 (1986). "Where a statute is clear on  
19 its face, a court may not go beyond the language of the statute in determining the legislature's  
20 intent." Id. "When the statutory language lends itself to two or more reasonable interpretations,  
21 the statute is ambiguous." State v. Lucero, 127 Nev. Adv. Op. 7 (2011). When a statute is

22  
23  
24 <sup>4</sup> As originally purposed, S.B. 401, stated that if an owner wanted to contest a lien, she could do  
25 so by motion to the district court, accompanied by an affidavit. If the Court issues an order for a  
26 hearing then the hearing was required to take place no sooner than 6 days and no later than 15  
27 days after the Court issued an order. During the Senate hearing, there was testimony that this  
28 short window would impact the Defendant's due process rights because it was an insufficient  
amount of time to answer and gather evidence. SENATE COMMITTEE ON JUDICIARY, COMMITTEE  
ANALYSIS OF A.B. 343 at 901-03 (May 25, 1995). In response to this testimony, the timeframe  
was changed to "no less than 10 days or more than 20 days." Id.

1 ambiguous the Court "will look to legislative history and rules of statutory construction in  
2 determining the statute's meaning." Silver State Elec. Supply Co. v. State ex rel. Dep't of  
3 Taxation, 123 Nev. 80, 84-85 (2007). "[I]t is not the business of this court to fill in alleged  
4 legislative omissions based on conjecture as to what the legislature would or should have done."  
5 McKay, 103 Nev. 490, 492 (1987). "When the language of the statute is ambiguous or silent on  
6 a particular issue, it should be construed in accordance with what 'reason and public policy  
7 would indicate the legislature intended.'" Mineral Cnty. v. State Bd. of Equalization, 121 Nev.  
8 533, 540 (2005).

10 Equal weight should be given to each sentence, phrase, and word in the statute to render  
11 them meaningful within the context of the purpose of the legislation. Harris Assocs. v. Clark  
12 County Sch. Dist., 119 Nev. 638, 642 (2003) (internal citations omitted). "Statutes within a  
13 scheme and provisions within a statute must be interpreted harmoniously with one another in  
14 accordance with the general purpose of those statutes and should not be read to produce  
15 unreasonable or absurd results." Washington v. State, 117 Nev. 735, 739 (2001). Nevada law  
16 requires that a statute, if reasonably possible, should be construed so as to function in harmony  
17 with the Constitution. State v. Glusman, 98 Nev. 412, 419-20 (1982).

18 West Taylor asserts that in order to foreclose under NRS 444.520, Waste Management  
19 must first perfect a proper lien by adhering to the procedural requirements of NRS Chapter 108,<sup>5</sup>  
20 which govern mechanic's liens. When applying NRS Chapter 108, West Taylor asserts that  
21 Waste Management has failed to properly notice intent to lien prior to recording and failed to  
22 follow the necessary timing requirements. West Taylor argues that the garbage lien is an  
23 encumbrance on real property so the mechanic's lien statutory structure must be applied as a  
24 whole, because independently NRS 444.520 does not provide the constitutionally necessary  
25 avenue to dispute the lien.

26  
27  
28 <sup>5</sup> West Taylor specifically argues the applicability of: NRS 108.239, NRS 108.233 and  
NRS 108.226

1 Waste Management argues that the legislative history supports a finding that the garbage  
2 company has the power to collect fees for services rendered, in an effort to meet the legislature's  
3 environmental and health related goals. Waste Management also argues that NRS 444.520 only  
4 incorporates the manner for foreclosing a mechanic's lien (NRS 108.239) and not the manner for  
5 perfecting a lien. Additionally, it argues that the language of NRS 444.520 specifically outlines  
6 the proper channels and content required to give notice of intent to lien and allows the garbage  
7 company to create a perpetual lien against the property. It states that NRS 444.520 contains its  
8 own requirements for perfecting a garbage lien when it states that a lien upon the property is not  
9 effective until it is mailed to the last known owner, delivered to the county recorder, recorded,  
10 and indexed.

11 Of great significance in this case, is whether only NRS 108.239, relating to mechanic's lien  
12 foreclosures, may be applied to the garbage lien or whether the garbage lien can be governed by  
13 the entire statutory structure of the mechanic's lien. The Court first considers the plain language  
14 of NRS 444.520 which states,

15 "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a  
16 perpetual lien against the property served, superior to all liens, claims and  
17 titles other than liens for general taxes and special assessments. The lien is  
18 not extinguished by the sale of any property on account of nonpayment of  
19 any other lien, claim or title, except liens for general taxes and special  
20 assessments. The lien may be foreclosed in the same manner as provided for  
21 the foreclosure of mechanics' liens." NRS 444.520.

22 In applying the principles of statutory interpretation the Court gives equal weight to each  
23 word and phrase within the statute. The Court has previously found that the word "may" is to be  
24 construed as permissive, unless the clear intent of the legislature is to the contrary. Sengbusch v.  
25 Fuller, 103 Nev. 580, 582 (1987). In this case the language permitting the application of the  
26 mechanic's lien foreclosure process is clear; however, there is an ambiguity as to which portions  
27 of the mechanic's lien statutes may be applied since the specific sections are not listed in the  
28 language of the statute. When an ambiguity exists, "a court should consult other sources such as  
legislative history, legislative intent, and analogous statutory provisions." Madera v. State Indus.  
Ins. Sys., 114 Nev. 253, 257 (1998).



1 In this case, the legislative history surrounding the amendments to NRS 444.520 is sparse. A  
2 review of the brief legislative history discussed above reveals that the Legislature failed to  
3 expressly state to what extent the mechanic's lien statutes should be incorporated; as a result, the  
4 Court finds that standing alone the legislative history of NRS 444.520 provides little guidance as  
5 to the application of the mechanic's lien statutes. Therefore, the Court will also consider the  
6 legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, to  
7 determine whether NRS 444.520 permits the incorporation of just one or all of the mechanic's  
8 liens statutes. Based on the rules of statutory interpretation, the Court applies the following  
9 factors to determine which interpretation of the statute is more reasonable: 1) the legislature's  
10 specific interest in drafting the statute; 2) whether any part of the statute would be rendered  
11 superfluous by an interpretation; 3) whether a specific interpretation would violate due process  
12 rights; and 4) if the result of an interpretation would be absurd. Great Basin Water Network v.  
13 State Eng'r, 126 Nev. Adv. Op. 20 (2010).

14 The Court considers whether the legislature was addressing a specific interest when drafting  
15 NRS 444.520. As discussed above, NRS 444.520 was developed as a means for the garbage  
16 company to recover money from customers who are delinquent on their garbage bill. The  
17 legislature determined that NRS 444.520 created a necessary remedy for the garbage company to  
18 collect missing payments because the garbage company was required to pick up the garbage  
19 whether or not the homeowner paid the garbage bill. The policy mandating garbage removal was  
20 the product of a long history of public health concerns, starting with the prevention of disease  
21 epidemics in the late 1800s.

22 The legislative history demonstrates that NRS 444.520 is rooted in an issue of fairness.  
23 While it provides the garbage company with the ability to lien a property, it is important to note  
24 that in the development of NRS 444.520, the legislature also considered the interest of the  
25 homeowner, focusing at length on the significance of placing a lien on real property.

26 ///

27 ///

28 ///

1 Additionally, testimony during the legislative hearings stated that:

2 "[C]ustomers are billed approximately \$33 per quarter, on a quarterly basis.  
3 If they are two quarters in arrears, the lien would be in the amount of \$66.  
4 Over 75 percent of the people actually pay the bill once they receive a  
5 notice of intent to lien. This is a long process. Customers receive about six  
6 requests for payment before they receive an intent to lien notice." Senate  
Committee on Government Affairs, Committee Analysis of A.B. 354, at 11  
(April 6, 2005).

7 This language indicates that the legislature was trying to create a real incentive for homeowners  
8 to address outstanding charges when they are notified by the garbage company that they are  
9 delinquent on the garbage bill, but also implement a process that allows an opportunity for the  
10 deficiency to be cured before foreclosure occurs. The Court finds that an interpretation that the  
11 legislature's intent in drafting the statutes was grounded in creating a fair system of payment for  
12 garbage services comports with reason and policy.

13 The Court also finds that incorporating the mechanic's lien statutes beyond NRS Chapter  
14 108.239, furthers the legislature's specific interest in establishing a fair system. The legislative  
15 history of NRS Chapter 108 is also grounded in creating an equitable system for placing a  
16 mechanic's lien on real property when there has not been payment for construction services  
17 rendered. In the development and amendments to the mechanic's lien statutes the legislature  
18 routinely considered the impacts that the changes would have to all parties involved and tried to  
19 maintain a fair system by fine tuning notice requirements, timing rules, and establishing clear  
20 content requirements for the lien. Therefore, the application of any statutory requirements from  
21 the mechanic's lien statutes to the garbage lien statutes, where the garbage liens statute is silent,  
22 would enhance the legislative intent to create a fair system.

23 The Court next considers whether either of the statutory interpretations supplied by the  
24 parties would render any language in NRS 444.520 superfluous. Adopting West Taylor's  
25 argument that the mechanic's lien statutes must be incorporated in their entirety would render the  
26 word "may" in NRS 444.520 superfluous. Additionally, notice requirements have been written  
27 into the language of NRS 444.520, which would be rendered superfluous if compliance with the  
28

1 notice statute for the mechanic's lien were required. In contrast, Waste Management's  
2 interpretation that NRS 108.239 may be applied to govern the foreclosure process for a garbage  
3 lien gives proper consideration to each word and phrase in NRS 444.520.

4 Alternatively, no portion of NRS 444.520 is rendered superfluous if the statute is interpreted  
5 to state that the garbage lien may apply the mechanic's liens statutes that addresses procedural  
6 requirements not already governed by NRS 444.520. This interpretation is in harmony with  
7 Nevada law which states that "where a general and a special statute, each relating to the same  
8 subject, are in conflict and they cannot be read together, the special statute controls." Laird v.  
9 State Pub. Emp. Ret. Bd., 98 Nev. 42, 45 (1982). This interpretation would render the specific  
10 requirements in the garbage statutes on topics, such as notice, as controlling while allowing the  
11 more generally incorporated mechanic's lien procedural statutes to apply when NRS 444.520 is  
12 silent on the issue. To offer a specific example, NRS 444.520 does not address the procedures  
13 for a hearing or dispute should the customer assert that her account is not delinquent; therefore,  
14 the customer may apply NRS 108.2275 to request a hearing to dispute the lien.<sup>6</sup> But, by that  
15 same token, the garbage lien will not automatically fail due to a lien period that runs longer than  
16 6 months<sup>7</sup>, because NRS 444.520 specifically creates a perpetual lien.<sup>8</sup>

17 Next the Court considers whether interpreting NRS 444.520 to only permit the incorporation  
18 of NRS 108.245, violates due process rights. NRS 444.520 creates a lien on real property with  
19 the ability to foreclose if the delinquent bills are not paid. Under the Nevada Constitution, the  
20 due process clause requires notice and an opportunity to be heard before the government  
21 deprives a person of his or her property. Nev. Const. art. I, § 8. If possible Nevada statutes  
22 should be construed as constitutional, and "[i]n the face of attack, every favorable presumption  
23

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24 <sup>6</sup> NRS 108.2275, states in relevant part: "The debtor of the lien claimant or a party in  
25 interest in the property subject to the notice of lien who believes the notice of lien is frivolous  
26 and was made without reasonable cause, or that the amount of the notice of lien is excessive,  
may apply by motion to the district court for the county where the property or some part thereof  
is located for an order directing the lien claimant to appear before the court to show cause why  
the relief requested should not be granted."

27 <sup>7</sup> This is mandated by NRS 108.233.

28 <sup>8</sup> The Court will provide additional analysis on this issue below.

1 and intendment will be brought to bear in support of constitutionality.” State v. Glusman, 98  
2 Nev. at 419-20. Therefore, since NRS 444.520 does not provide an opportunity to be heard if the  
3 property owner disputes the lien, but it does incorporate the mechanic’s lien statutes, a  
4 constitutional interpretation of NRS 444.520 would incorporate more provisions of NRS Chapter  
5 108 than just NRS 108.245. Furthermore, the legislative history pertaining to NRS 108.2275  
6 specifically states that the legislature designed the procedures for contesting a mechanic’s lien  
7 with the preservation of due process rights in mind.

8 Finally, the Court will consider whether permitting the incorporation of multiple  
9 provision of NRS Chapter 108 into NRS 444.520 is absurd. The Court does not find the  
10 permissive application of multiple mechanic’s lien statutes to be absurd, as it is the only manner  
11 of interpretation that preserves the customer’s ability to dispute a lien. After considering the  
12 legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, the  
13 Court finds the NRS 444.520 incorporates the mechanic’s lien statutes to the extent that NRS  
14 444.520 is silent on a procedure.

15 **IV. NRS 108.226 creates a statute of limitations to notice a lien.**

16 West Taylor argues that Waste Management has failed to follow the statute of limitations  
17 outlined in NRS 108.226, which requires the notice of lien to be filed 90 days after the quarterly  
18 billing went delinquent in 2007 or alternatively fifteen days after the billing went delinquent per  
19 the *1994 Franchise Agreement*. Additionally, West Taylor argues that if Waste Management has  
20 an indefinite amount of time after an account becomes delinquent to file the lien, then the general  
21 statute of limitations provision in Nevada, NRS 11.190, would have no bearing on the case.

22 Waste Management contends that the NRS 108.226’s statute of limitations does not  
23 apply. Alternatively, if the Court finds that NRS 108.226 does apply, Waste Management argues  
24 that the 90 day period is not triggered by the date that that payment became delinquent, instead it  
25 is triggered by the last date that services were rendered, which essentially resets every billing  
26 cycle.

1           NRS 108.226 states:

2           "[t]o perfect a lien, a lien claimant must record a notice of lien in the office  
3           of the county recorder of the county where the property or some part thereof  
4           is located in the form provided in subsection 5: (a) Within 90 days after the  
5           date on which the latest of the following occurs: (1) The completion of the  
6           work of improvement; (2) The last delivery of material or furnishing of  
7           equipment by the lien claimant for the work of improvement; or (3) The last  
8           performance of work by the lien claimant for the work of improvement."

9           The clear language of NRS 108.226 provides Waste Management with the opportunity to supply  
10          notice to its customers within 90 days after each billing cycle that becomes delinquent. Currently  
11          Waste Management operates on a quarterly billing cycle, this means that a contract starting in  
12          January would be billed at the end of March. Failure to pay the March garbage bill would cause  
13          the account to fall in arrears at that time. Under the present system the customer would not be  
14          notified of the missed payment until the next billing cycle in June; however, imposing the 90 day  
15          requirement may encourage the garbage company to send out a "notice of lien" sooner or to  
16          impose a shorter billing cycle. Generally speaking, bills are sent out prior to their due date,  
17          which would also provide customers with a small window to cure the deficiency before the  
18          notice period runs if the notice to lien had not already arrived. NRS 108.226 applies to the  
19          garbage lien statutes because it was incorporated in NRS 444.520, and it does not conflict with  
20          existing statutory language in the garbage lien enacting statute. Therefore, NRS 108.226 governs  
21          how far back in time Waste Management is able to notice and record a garbage lien.

22               **V.       After the lien is recorded it exists in perpetuity, but the statute of limitations**  
23               **places a cap on the timeframe that the home may be foreclosed upon under**  
24               **the lien.**

25          West Taylor argues that Waste Management failed to commence an action within six months  
26          to foreclose the lien after notice of the lien is sent, therefore under NRS 108.233 the lien has  
27          expired. Waste Management asserts that the language of NRS 444.520 can only be interpreted in  
28          one reasonable manner, to mean that a garbage lien encumbers a property forever, or until it is  
29          paid. Waste Management cites State v. Yellow Jacket Silver Min. Co. to argue that the lien  
30          operates like a tax and remains attached to the land, but that the remedy of foreclosure may

1 expire with the statute of limitations. State v. Yellow Jacket Silver Min. Co., 14 Nev. 220, 232  
2 (1879).<sup>9</sup>

3 NRS 108.233 states that a mechanic's lien shall not bind a property and shall expire after six  
4 months. This language directly conflicts with the plain language of NRS 444.520 which states  
5 that the filing of a garbage lien "constitutes a perpetual lien against the property served". Since  
6 NRS 108.233 and NRS 444.520 both pertain to the same subject, how long a recorded lien will  
7 exist, NRS 444.520 is controlling as the statute that is specific to garbage liens. The language of  
8 NRS 444.520 is clear and unambiguous, and allows the lien to exist in perpetuity. In Wasson v.  
9 Hogenson, the Court considered the language of a similar statute that provided that "until paid"  
10 all charges will constitute a "perpetual lien" against the property served. Wasson v. Hogenson,  
11 196 Colo. 183, 191 (1978). It found that "[u]ntil" is a functional word to indicate continuance  
12 (as of an action, condition or state) up to a particular time. 'Perpetual' means continuing forever;  
13 everlasting; eternal." Id. This Court adopts the definitions used in Wasson v. Hogenson and finds  
14 that once a garbage lien is recorded it is perpetual.<sup>10</sup>

15 However, in Yellow Jacket, the Court also finds that even if a tax exists in perpetuity that the  
16 remedy to enforce the collection of the tax may be barred by the statute of limitations. Id.  
17 Nevada's "statute of limitations embraces all characters of actions, legal and equitable." White v.  
18 Sheldon, 4 Nev. 280, 288-89 (1868). Statutes of limitations are generally adopted to serve the  
19 individual and not for public policy, and they "[prevent] surprises through the revival of claims  
20 that have been allowed to slumber until evidence has been lost, memories have faded, and  
21 witnesses have disappeared." Petersen v. Bruen, 106 Nev. 271, 273 (1990). Accordingly, under  
22 NRS 11.190, an "[a]n action upon a statute for a penalty or forfeiture, where the action is given  
23

24 <sup>9</sup> West Taylor rejects Waste Management's contention that the garbage lien can be  
25 equated to a tax and argues that lien is essentially an encumbrance on real property that requires  
26 a forum for dispute resolution. But, West Taylor has elected not to completely brief the  
27 constitutional arguments at this time.

28 <sup>10</sup> See also, N. Washington Water & Sanitation Dist. v. Majestic Sav. & Loan Ass'n, 42  
Colo. App. 158, 160 (1979)(holding that a tap lien, which could be foreclosed in the same  
manner as a mechanics' lien, did not have to abide by the six-month time limit required in the  
mechanics' lien because it was inconsistent with the statutory language that "(u)ntil paid all . . .  
charges shall constitute a perpetual lien on and against the property serve.")

1 to a person" must be brought within two years, except when the statute imposing it prescribes a  
2 different limitation. In this case, the language of NRS 444.520 does not create a new statute of  
3 limitations for foreclosing on a garbage lien nor does it specifically exempt the garbage lien from  
4 the standard statutes of limitations found in NRS 11.190. Therefore, the two year statute of  
5 limitations applies to Waste Management's ability to foreclose, which protects the homeowner  
6 from the revival of a lien several years after it was imposed.

7 In practice this means that if Waste Management properly notices a lien within the 90 days  
8 required by NRS 108.226, it then has two years under NRS 11.190 to pursue the remedy of  
9 foreclosure. Should Waste Management fail to foreclose upon the property within two years, the  
10 lien will still exist but the remedy to recover the property through foreclosure will have expired.  
11 Unless another remedy is available Waste Management will have to either wait for the customer  
12 to pay or wait for the property to be sold to collect on its lien. Moreover, the legislative history  
13 supports this interpretation of the applicable statute of limitations, because during the Assembly  
14 hearing the Assembly Committee discussed at length the importance of providing a significant  
15 opportunity for the homeowner to cure the garbage lien and ways to avoid unexpected  
16 foreclosures. Accordingly, the Court finds that once a lien is recorded it lasts in perpetuity, but  
17 that the ability to foreclose upon that lien expires after a two year statute of limitations.

#### 18 *VI. Conclusion*

19 The Court finds that there is no issue of material fact presented for consideration in the  
20 motion for summary judgment, and that the questions before the Court must be determined as a  
21 matter of law. Text, context, and history support the constitutionally sound reading of NRS  
22 444.520 that permits the incorporation of NRS Chapter 108 mechanic's lien statutes to the extent  
23 that they govern lien foreclosure procedures not addressed by the language in NRS 444.520.  
24 Furthermore, the 90 day notice of lien statute of limitations found in NRS 108.226 does apply to  
25 garbage liens. After a lien is noticed Waste Management has two years to foreclose upon the

26 ///

27 ///

1 property, and after that time has lapsed the lien will last in perpetuity but leave Waste  
2 Management without the recourse of foreclosure.

3 Based on the foregoing and good cause appearing,

4 IT IS HEREBY ORDERED that WEST TAYLOR'S Motion for Partial Summary  
5 Judgment is DENIED in part and GRANTED in part. WEST TAYLOR's Motion for Summary  
6 Judgment is GRANTED as to any claims for delinquent bills that WASTE MANAGEMENT  
7 failed to notice within the 90 day window, but it is DENIED with regard to properly noticed  
8 claims.

9 DATED this 28 day of July, 2014.

10  
11 Connie I. Steinheimer  
12 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18<sup>th</sup> day of July, 2014, I electronically filed the **ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Personal delivery to the following: [NONE]**

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

MATTHEW HIPPLER, ESQ. for KAREN GONZALEZ et al  
BRYAN WRIGHT, ESQ for KAREN GONZALEZ et al

**Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:**

C. Nicholas Pereos, Esq.  
1610 Meadow Wood Lane, Ste. 202  
Reno, NV 89502

  
\_\_\_\_\_  
Marci Stone

**EXHIBIT 3**

**EXHIBIT 3**

1 CODE: 2535  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEYS FOR PLAINTIFF

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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

WEST TAYLOR STREET, LLC,  
a limited liability company,

Plaintiff,

Case No. CV12 02995  
Dept. No. 4

vs.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and  
DOES 1 THROUGH 10,

Defendants.

NOTICE OF ENTRY OF JUDGMENT/ORDER


TO: DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on the 28<sup>th</sup> day of July, 2014, an Order was entered in the above-entitled action in favor of Plaintiff and against Defendants, a copy of which is marked as **Exhibit "1"** attached hereto and made a part hereof.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 22<sup>nd</sup> day of July, 2016

C. NICHOLAS PEREOS, LTD.

By:   
C. NICHOLAS PEREOS, ESQ.  
1610 MEADOW WOOD LANE  
RENO, NV 89502  
ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

ROBISON, BELAUSTEGUI, SHARP & LOW  
Mark G. Simons, Esq.  
71 Washington, Street  
Reno, NV 89503  
*Attorneys for Waste Management  
and Karen Gonzalez*

DATED: 6/22/16

  
Iris M. Norton

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Schedule of Exhibits

Exhibit 1 ..... Order

**EXHIBIT "1"**

FILED  
Electronically  
CV12-02995  
2016-06-22 11:52:26 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5574329

**EXHIBIT "1"**

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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited  
liability company,

Plaintiff,

v.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and DOES 1  
through 10,

Defendants.

Case No. CV12-02995

Department No.: 4

**ORDER**

On March 11, 2014, Plaintiff West Taylor Street, LLC (hereinafter, "West Taylor"), by and through its attorney, C. Nicholas Pereos, Esq. filed *Motion for Partial Summary Judgment*, and two affidavits in support of the Motion for Partial Summary Judgment: *Affidavit of C. Nicholas Pereos* and *Affidavit of Teri Morrison*. On March 28, 2014, Defendants Waste Management of Nevada, Inc. and Karen Gonzalez (hereinafter collectively, "Waste Management"), by and through their attorney, Gregory S. Gilbert, Esq., Bryan L. Wright, Esq., and Matthew B. Hippler, Esq. of Holland & Hart LLP, filed their *Opposition to Plaintiff's Motion for Partial Summary Judgment*. On April 11, 2014, West Taylor filed its *Reply Argument in Support of Motion for Partial Summary Judgment*, and submitted the matter to the Court.

On May 7, 2014, Nicholas Pereos, Esq. appeared on behalf of West Taylor, and Bryan Wright, Esq. appeared on behalf of Waste Management. The Court heard arguments concerning

1 the *Motion for Partial Summary Judgment*. At the conclusion of the oral arguments the Court  
2 took the motion under consideration.

3 NRCp 56(c) provides, that summary judgment "shall be rendered forthwith if the  
4 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
5 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving  
6 party is entitled to a judgment as a matter of law." The District Court is to exercise great caution  
7 in granting summary judgment. Posadas v. City of Reno, 109 Nev. 448, 452 (1993). "The party  
8 moving for summary judgment bears the initial burden of production to show the absence of a  
9 genuine issue of material fact." Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602  
10 (2007). "If such a showing is made, then the party opposing summary judgment assumes a  
11 burden of production to show the existence of a genuine issue of material fact." Id.

12 West Taylor moves for partial summary judgment or in the alternative it moves for the  
13 Court to dismiss Defendant's answer to the complaint and enter judgment on liability from lack  
14 of standing to record the garbage lien. West Taylor advances four arguments: 1) Waste  
15 Management does not have standing to record a garbage lien; 2) the statutory formalities  
16 required for mechanic's liens apply to garbage liens because NRS 444.520 incorporates the  
17 entire mechanic's lien statutory scheme; 3) a statute of limitations applies to this case; and 4) that  
18 the lien should not exist in perpetuity after it has been recorded.

19 Waste Management argues that it has standing to record a garbage lien because Waste  
20 Management acquired Reno Disposal Co., which is the waste management company that  
21 contracted with the city of Reno.<sup>1</sup> Waste Management also argues that NRS 444.520, expressly  
22

23 <sup>1</sup> As a preliminary matter, the Court finds that Waste Management has standing to record  
24 a garbage lien. NRS 444.520 provides that the governing body of any municipality which has an  
25 approved plan for the management of solid waste may, by ordinance, provide for the levy and  
26 collection of fees, and until paid, any fee or charge levied constitutes a perpetual lien. In the  
27 instant matter, Waste Management provided a copy of the 1994 *First Amended City of Reno*  
28 *Garbage Franchise Agreement* which was entered into by the City of Reno and Reno Disposal  
Co.. Additionally, an affidavit by David Stratton, Vice President and Assistant Secretary for  
Waste Management of Nevada, Inc., was filed, stating that around June 1, 2008, Waste  
Management acquired Reno Disposal Co.. Waste Management also provided a letter from  
Waste Management to the City of Reno, which extended the 1994 contract for an additional 15  
years. Finally, Waste Management filed a copy of the *Exclusive Franchise Agreement*  
*Residential Solid Waste and Recyclable Materials* that was signed in 2012 by the City of Reno



1 states that garbage liens *may* be foreclosed in the same manner as a mechanic's lien, but that the  
2 language is permissive and not required; therefore, Waste Management followed proper  
3 procedure when filing the garbage lien. Furthermore, it argues that the language of NRS. 444.520  
4 specifically creates a garbage lien that exists in perpetuity if the amount in arrears is not paid.

5 Neither party argues that there is a question of material fact, therefore the Court will  
6 decide the pending questions as a matter of law. The Court will first summarize briefly the  
7 history of the solid waste management system and NRS 444.520, and consider the development  
8 of the mechanic's lien statutes before addressing the substantive issues in this case.

9 *I. History of NRS 444.520 and the Solid Waste Management System*

10 The legislature initially became concerned with public health in 1893. On March 6, 1893,  
11 the Nevada Legislature enacted a statute that required the establishment of a State Board of  
12 Health, and instructed the Board to work for the life and health of the inhabitants of the State.  
13 Laws 1893, p. 117 c. 112. Specifically, the Board was required to conduct sanitary  
14 investigations and inquiries regarding the causes of diseases and methods of prevention. This  
15 included research to determine how habitats and circumstances of life impact public health. *Id.*  
16 The Board was given the authority to make regulations for the "better preservation of the public  
17 health in contagious and epidemic diseases" and if someone was in violation of these regulations  
18 they were notified in writing. If the violator failed to comply within five days of receiving  
19 notice, the individual was deemed guilty of a misdemeanor and fined between \$100-\$500 or  
20 imprisoned in the county jail for 50 -250 days. *Id.* In 1911, the Legislature enacted a second bill  
21 that created a State Board of Health focused primarily on identifying and recording the cause of  
22 death and the requirements for birth certificates. 1911 Nev. Stat. 392.

23 In 1971, Senate Bill 490 (hereinafter, "S.B. 490") was proposed to establish a solid waste  
24 management system. It provided the governing body of a municipality, in conjunction with the  
25 District Board of Health, with the authority to make rules and regulations regarding the  
26

27 and Reno Disposal Co., which expires in 2029. Based on these undisputed contracts, the Court  
28 finds that Waste Management had standing to record a lien under NRS 444.520 if West Taylor  
was delinquent on its garbage bills.

1 management of solid waste. Assembly Committee on Environmental and Public Resources  
2 (March 31, 1971). After the first read in the Senate, S.B. 490 was amended to include the  
3 following environmental goals: 1) protect public health and welfare; 2) prevent water or air  
4 pollution; 3) prevent the spread of disease and the creation of nuisances; 4) conserve natural  
5 resources; and, 5) enhance the beauty and quality of the environment. Journal of the Senate, at  
6 date stamp 7 (March 22, 1971).

7 In the development of S.B. 490, the legislative history reveals that the intent behind this  
8 bill was to force the Nevada Department of Health to exercise its preexisting power to regulate  
9 the disposal of solid waste. Assembly Committee on Environmental and Public Resources  
10 (March 31, 1971). On April 1, 1971, there was a second discussion stating, in part, that S.B. 490  
11 was intended to clean up the dumps, and that it did not apply to private property or agricultural  
12 waste disposed on private land, unless a nuisance is being created. Assembly Committee on  
13 Environmental and Public Resources (April 1, 1971). The goal was to create a statewide scheme  
14 so that Nevada could qualify for federal funding. Id.

15 On February 8, 1991, Assembly Bill 320 (hereinafter, "A.B. 320") was proposed as an  
16 effort to create a basic recycling program and to reduce the disposal of certain kinds of solid  
17 waste. The first version of A.B. 320, Sec. 19 (NRS 444.520) imposed a fee for the disposal of  
18 solid waste, stating: "there is hereby levied upon the operator of each disposal site a fee of \$2.50  
19 per ton of solid waste accepted for disposal or transfer at the site....All claims against the account  
20 must be paid as other claims against the state are paid." A.B. 320 (Feb. 8, 1991). Assembly  
21 Member Vivian Freeman, who introduced the bill, indicated that the intended effects of this fee  
22 were threefold: 1) revenues would help fund recycling programs, 2) the charges would be more  
23 reflective of the cost of running a landfill and would assist in funding landfill operations, and 3)  
24 the higher disposal rates could have provided a cost incentive that promotes recycling because  
25 residents paying for the quantity of garbage being disposed would be more likely to remove  
26 recyclable materials. Assembly Bill Omnibus Recycling, Assemblywoman Vivian L. Freeman,  
27 Assembly Committee on Natural Resources, Agriculture and Mining (March 4, 1991). During a  
28 committee meeting it was agreed that the \$2.50 fee was excessive, and needed to be eliminated

1 and re-evaluated after two years. Assembly Committee on Natural Resources, Committee  
2 Analysis of A.B. 320, at 11 (April 6, 1991). After two amendments, A.B. 320 read as follows:

3 "The governing body of any municipality which has an approved plan for  
4 the management of solid waste may, by ordinance, provide for the levy and  
5 collection of other or additional fees and charges and require such licenses  
6 as may be appropriate and necessary to meet the requirements of NRS  
7 444.460, inclusive. The fees authorized by this section are not subject to  
8 the limit on the maximum allowable revenue from fees established  
9 pursuant to NRS 354.5989."

10 A.B. 320 Reprint with Adopted Amendments, at 6 (May 24,  
11 1991)(emphasis added).

12 It had been determined that NRS 354.5989<sup>2</sup> would be the only statute to place a fee limitation on  
13 the proposed garbage fees. Therefore, the legislature specifically made A.B. 320 exempt from  
14 NRS 354.5989 through this amendment. These 1991 amendments are still reflected in the statute  
15 today.

16 In 2005, NRS 444.520 was amended again to create a method of recourse for the garbage  
17 company once a customer became delinquent on a bill by allowing the garbage company to place  
18 a lien on the property. Senate Committee on Health and Human Resources, Committee Analysis  
19 of S.B. 354, at 10-11 (April 6, 2005).

20 This amendment added the following language in bold:

21 1. The governing body of any municipality which has an approved  
22 plan for the management of solid waste may, by ordinance, provide for the  
23 levy and collection of other or additional fees and charges and require such  
24 licenses as may be appropriate and necessary to meet the requirements of  
25 NRS 444.460 to 444.610, inclusive.

26 2. The fees authorized by this section are not subject to the limit on  
27 the maximum allowable revenue from fees established pursuant to NRS  
28 354.5989.

3. Until paid, any fee or charge levied pursuant to subsection 1  
constitutes a perpetual lien against the property served, superior to all  
liens, claims and titles other than liens for general taxes and special  
assessments. The lien is not extinguished by the sale of any property on  
account of nonpayment of any other lien, claim or title, except liens for  
general taxes and special assessments. The lien may be foreclosed in the  
same manner as provided for the foreclosure of mechanics' liens.

---

<sup>2</sup> NRS 354.5989 regulates local government imposed fees for business licenses.

1 4. As a remedy established for the collection of any fee or charge  
2 levied pursuant to subsection 1, an action may be brought in the name  
3 of the governing body of the municipality in any court of competent  
4 jurisdiction against any person who occupied the property when the  
5 service was rendered or against any person guaranteeing payment of  
6 the fee or charge, or against all persons, for the collection of any such  
7 fee or charge that is delinquent.

8 5. A lien against the property served is not effective until a  
9 notice of the lien, separately prepared for each lot affected, is:

10 (a) Mailed to the last known owner at the owner's last known  
11 address according to the records of the county in which the property is  
12 located;

13 (b) Delivered to the office of the county recorder of the county in  
14 which the property is located;

15 (c) Recorded by the county recorder in a book kept for the  
16 purpose of recording instruments encumbering land; and

17 (d) Indexed in the real estate index as deeds and other  
18 conveyances are required by law to be indexed.

19 Senate Bill 354 (March 25, 2005).

20 The Senate Committee discussed that because of public health concerns the garbage company  
21 is required to pick up all garbage, even if a customer's account is in arrears. Id. The proposed  
22 amendments would require the homeowner to address the garbage lien, even if a tenant was  
23 living on the premises. Id. Ultimately, the Senate Committee decided to omit the following  
24 language from S.B. 354:

25 "As a remedy established for the collection of any fee or charge levied  
26 pursuant to subsection 1, an action may be brought in the name of the  
27 governing body of the municipality in any court of competent jurisdiction  
28 against any person who occupied the property when the service was  
29 rendered or against any person guaranteeing payment of the fee or charge,  
30 or against all persons, for the collection of any such fee or charge that is  
31 delinquent."

32 The only explanation for this deletion was that the purposed amendment added "some  
33 unnecessary language." Id.

34 When the Assembly Committee discussed A.B. 354, it recognized that the bill allowed  
35 the garbage company to create a lien that could ultimately lead to the foreclosure of residential  
36 homes. Assembly Committee on Health and Human Resources, Committee Analysis of A.B.

1 354, at 12-13 (May 20, 2005). Jennifer Lazovich (hereinafter, "Lazovich"), Legislative Advocate  
2 representing the garbage company, Republic Services, Inc., indicated that the garbage lien  
3 process had two steps: first, it requires that a notice of an intent to lien be issued. Id. The second  
4 step, if the garbage bill remains unpaid, is to record the lien with the county. This lien will be  
5 removed off the county's record once it has been paid. Lazovich also indicated that the lien  
6 "operates in the same way as a mechanic's lien" which could ultimately end in a foreclosure.  
7 However she followed this remark by stating that Republic Services, Inc. had never taken this  
8 extreme step and never would. Id. The legislative history did not discuss the applicability of the  
9 mechanic's lien statutes any further.

10 Finally, the Senate Committee discussed that if renters live in a home, the homeowner  
11 must take precautionary steps and have the garbage bill sent to the homeowner's residence  
12 instead of the rental. Id. This will allow the homeowner to pay the garbage bill and ensure that a  
13 lien is not placed on the property, then the homeowner can recover the money by incorporating  
14 the garbage bill into the price of the rent. Id.

## 15 *II. Procedural History of NRS 108 Mechanic's Liens*

16 Of importance to the Court is the legislative intent surrounding the inception and  
17 development of NRS Chapter 108, the mechanic's lien statutes. NRS Chapter 108 contains sixty-  
18 two individual statutes, many of which provide definitions. The Court has considered the  
19 implementation and development of those statutes pertaining to the requirements for perfecting a  
20 mechanic's lien, providing notice of the lien, the duration of the lien, and avenues available to  
21 refute a lien.<sup>3</sup>

22 On February 2, 1965, Assembly Bill 236 (hereinafter, "A.B. 236") was proposed in order  
23 to add mechanic's liens to the statutory liens found in NRS Chapter 108. After reviewing the bill  
24 the Assembly Committee sought to expand the breadth of the mechanic's lien to sufficiently  
25 cover the entire construction industry. Assembly Committee on Judiciary. Committee Analysis

26  
27 <sup>3</sup> Specifically, the Court has analyzed the legislative history for NRS 108.226, NRS  
28 108.227, NRS 108.2275, NRS 108.233, and NRS 108.245. Amendments were made to these  
statutes in the following years: 1967, 1969, 1971, 1979, 1987, 1995, 1997, 2003, 2005, and 2007.  
The Court considers all of these amendments and their legislative history.

1 of A.B. 236 at 1-4 (Feb. 16, 1965). The Assembly Committee was also concerned with the  
2 fairness of the lien process, focusing on the timing in which a lien could be obtained, the  
3 explanatory details that should be contained in the lien to allow the lien party to refute the lien,  
4 the time needed to properly notice a lien, and how a lien would apply to multiple properties like  
5 tract homes. Id. The Assembly Committee also discussed the importance of creating a bill that  
6 protects both the homeowner and the contractor. Id.

7 The Assembly Committee discussed amendments to A.B. 236, and adopted Oregon law  
8 which stated that a lien is not established unless there is proper notice of the lien, and then it  
9 specified the lien requirements. Assembly Committee on Judiciary, Committee Analysis of A.B.  
10 236 at 90-92 (March 2, 1965). Discussion also ensued regarding whether notice of a lien should  
11 be provided without recording the lien, and the Assembly Committee decided to call Oregon  
12 officials to inquire as to the procedures implemented there. Assembly Committee on Judiciary,  
13 Committee Analysis of A.B. 236 at 147-49 (March 15, 1965). The Assembly Committee  
14 ultimately gave A.B. 236 to the Senate with the intent to add language constructed from Oregon  
15 law in the future. This language would require that notice be sent to the owner by material  
16 suppliers, but did not require the notice to be recorded. Assembly Committee on Judiciary,  
17 Committee Analysis of A.B. 236 at 151 (March 16, 1965). The Senate Committee subsequently  
18 reviewed and amended A.B. 236, but no minutes are available from this committee. The  
19 amendments made by the Senate Committee added language governing the assignment of a lien  
20 and instituted a 20 day timeline for laborers to provide the owner of the property with notice of  
21 materials supplied, work performed, or services rendered. *Journal of the Senate* (March 3,  
22 1965).

23 In 1987, Assembly Bill 220 (hereinafter, "A.B. 220") was introduced in response to a  
24 1982 Supreme Court ruling which found that the mechanic's lien statutes denied the contractor  
25 or subcontractor the recovery of profits and overhead. Senate Committee on Judiciary,  
26 Committee Analysis of A.B. 343 at 901-03 (March 19, 1979). The mechanic's lien statutes were  
27 amended to allow the contractor or subcontractor to recover the terms of the contract and in the  
28 absence of a contract to recover for materials, labor, and the fair market value of profits and

1 overhead. Id. The legislature discussed that this amendment prevent the homeowner from  
2 receiving a windfall by only having to pay for materials and labor in the absence of a contract.  
3 Id.

4 In 1995, the legislature proposed a major amendment to the mechanic's lien with Senate  
5 Bill 401 (hereinafter, "S.B. 401"). S.B. 401, in part, added an amendment that allowed a party  
6 with interest in the premises in which a lien has been filed to appear before the court to assert  
7 that the lien was frivolous or excessive. Senate Committee on Judiciary, Committee Analysis of  
8 A.B. 343 at 2-10, date stamp 2613-21 (May 23, 1995). During the Senate hearing it was  
9 discussed that the amendments were intended to be good for all parties. Id. The legislature  
10 acknowledge that there was a need to speed up the mechanic's lien process, but it also did not  
11 want to do so to the detriment of any due process rights.<sup>4</sup>

12  
13 **III. Procedural requirements found in the mechanic's lien statutes may be**  
14 **applied to a garbage lien when NRS 444.520 is silent on an issue.**

15 The extent to which the mechanic's lien statutes are incorporated into NRS 444.520 is a  
16 matter of first impression. To determine the interplay between NRS Chapter 108 and NRS  
17 444.520 the Court must interpret NRS 444.520. Words of "a statute should be given their plain  
18 meaning." McKay v. Bd. of Supervisors, 102 Nev. 644, 648 (1986). "Where a statute is clear on  
19 its face, a court may not go beyond the language of the statute in determining the legislature's  
20 intent." Id. "When the statutory language lends itself to two or more reasonable interpretations,  
21 the statute is ambiguous." State v. Lucero, 127 Nev. Adv. Op. 7 (2011). When a statute is  
22  
23

24 <sup>4</sup> As originally purposed, S.B. 401, stated that if an owner wanted to contest a lien, she could do  
25 so by motion to the district court, accompanied by an affidavit. If the Court issues an order for a  
26 hearing then the hearing was required to take place no sooner than 6 days and no later than 15  
27 days after the Court issued an order. During the Senate hearing, there was testimony that this  
28 short window would impact the Defendant's due process rights because it was an insufficient  
amount of time to answer and gather evidence. SENATE COMMITTEE ON JUDICIARY, COMMITTEE  
ANALYSIS OF A.B. 343 at 901-03 (May 25, 1995). In response to this testimony, the timeframe  
was changed to "no less than 10 days or more than 20 days." Id.

1 ambiguous the Court "will look to legislative history and rules of statutory construction..  
2 determining the statute's meaning." Silver State Elec. Supply Co. v. State ex rel. Dep't of  
3 Taxation, 123 Nev. 80, 84-85 (2007). "[I]t is not the business of this court to fill in alleged  
4 legislative omissions based on conjecture as to what the legislature would or should have done."  
5 McKay, 103 Nev. 490, 492 (1987). "When the language of the statute is ambiguous or silent on  
6 a particular issue, it should be construed in accordance with what 'reason and public policy  
7 would indicate the legislature intended.'" Mineral Cnty. v. State, Bd. of Equalization, 121 Nev.  
8 533, 540 (2005).

10 Equal weight should be given to each sentence, phrase, and word in the statute to render  
11 them meaningful within the context of the purpose of the legislation. Harris Assocs. v. Clark  
12 County Sch. Dist., 119 Nev. 638, 642 (2003) (internal citations omitted). "Statutes within a  
13 scheme and provisions within a statute must be interpreted harmoniously with one another in  
14 accordance with the general purpose of those statutes and should not be read to produce  
15 unreasonable or absurd results." Washington v. State, 117 Nev. 735, 739 (2001). Nevada law  
16 requires that a statute, if reasonably possible, should be construed so as to function in harmony  
17 with the Constitution. State v. Glusman, 98 Nev. 412, 419-20 (1982).

18 West Taylor asserts that in order to foreclose under NRS 444.520, Waste Management  
19 must first perfect a proper lien by adhering to the procedural requirements of NRS Chapter 108,<sup>5</sup>  
20 which govern mechanic's liens. When applying NRS Chapter 108, West Taylor asserts that  
21 Waste Management has failed to properly notice intent to lien prior to recording and failed to  
22 follow the necessary timing requirements. West Taylor argues that the garbage lien is an  
23 encumbrance on real property so the mechanic's lien statutory structure must be applied as a  
24 whole, because independently NRS 444.520 does not provide the constitutionally necessary  
25 avenue to dispute the lien.

27  
28 <sup>5</sup> West Taylor specifically argues the applicability of: NRS 108.239, NRS 108.233 and  
NRS 108.226



1 Waste Management argues that the legislative history supports a finding that the garbage  
2 company has the power to collect fees for services rendered, in an effort to meet the legislature's  
3 environmental and health related goals. Waste Management also argues that NRS 444.520 only  
4 incorporates the manner for foreclosing a mechanic's lien (NRS 108.239) and not the manner for  
5 perfecting a lien. Additionally, it argues that the language of NRS 444.520 specifically outlines  
6 the proper channels and content required to give notice of intent to lien and allows the garbage  
7 company to create a perpetual lien against the property. It states that NRS 444.520 contains its  
8 own requirements for perfecting a garbage lien when it states that a lien upon the property is not  
9 effective until it is mailed to the last known owner, delivered to the county recorder, recorded,  
10 and indexed.

11 Of great significance in this case, is whether only NRS 108.239, relating to mechanic's lien  
12 foreclosures, may be applied to the garbage lien or whether the garbage lien can be governed by  
13 the entire statutory structure of the mechanic's lien. The Court first considers the plain language  
14 of NRS 444.520 which states,

15 "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a  
16 perpetual lien against the property served, superior to all liens, claims and  
17 titles other than liens for general taxes and special assessments. The lien is  
18 not extinguished by the sale of any property on account of nonpayment of  
19 any other lien, claim or title, except liens for general taxes and special  
20 assessments. The lien may be foreclosed in the same manner as provided for  
21 the foreclosure of mechanics' liens." NRS 444.520.

22 In applying the principles of statutory interpretation the Court gives equal weight to each  
23 word and phrase within the statute. The Court has previously found that the word "may" is to be  
24 construed as permissive, unless the clear intent of the legislature is to the contrary. Sengbusch v.  
25 Fuller, 103 Nev. 580, 582 (1987). In this case the language permitting the application of the  
26 mechanic's lien foreclosure process is clear; however, there is an ambiguity as to which portions  
27 of the mechanic's lien statutes may be applied since the specific sections are not listed in the  
28 language of the statute. When an ambiguity exists, "a court should consult other sources such as  
legislative history, legislative intent, and analogous statutory provisions." Madera v. State Indus.  
Ins. Sys., 114 Nev. 253, 257 (1998).

1 In this case, the legislative history surrounding the amendments to NRS 444.520 is sparse. A  
2 review of the brief legislative history discussed above reveals that the Legislature failed to  
3 expressly state to what extent the mechanic's lien statutes should be incorporated; as a result, the  
4 Court finds that standing alone the legislative history of NRS 444.520 provides little guidance as  
5 to the application of the mechanic's lien statutes. Therefore, the Court will also consider the  
6 legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, to  
7 determine whether NRS 444.520 permits the incorporation of just one or all of the mechanic's  
8 liens statutes. Based on the rules of statutory interpretation, the Court applies the following  
9 factors to determine which interpretation of the statute is more reasonable: 1) the legislature's  
10 specific interest in drafting the statute; 2) whether any part of the statute would be rendered  
11 superfluous by an interpretation; 3) whether a specific interpretation would violate due process  
12 rights; and 4) if the result of an interpretation would be absurd. Great Basin Water Network v.  
13 State Eng'r, 126 Nev. Adv. Op. 20 (2010).

14 The Court considers whether the legislature was addressing a specific interest when drafting  
15 NRS 444.520. As discussed above, NRS 444.520 was developed as a means for the garbage  
16 company to recover money from customers who are delinquent on their garbage bill. The  
17 legislature determined that NRS 444.520 created a necessary remedy for the garbage company to  
18 collect missing payments because the garbage company was required to pick up the garbage  
19 whether or not the homeowner paid the garbage bill. The policy mandating garbage removal was  
20 the product of a long history of public health concerns, starting with the prevention of disease  
21 epidemics in the late 1800s.

22 The legislative history demonstrates that NRS 444.520 is rooted in an issue of fairness.  
23 While it provides the garbage company with the ability to lien a property, it is important to note  
24 that in the development of NRS 444.520, the legislature also considered the interest of the  
25 homeowner, focusing at length on the significance of placing a lien on real property.

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1 Additionally, testimony during the legislative hearings stated that:

2 "[C]ustomers are billed approximately \$33 per quarter, on a quarterly basis.  
3 If they are two quarters in arrears, the lien would be in the amount of \$66.  
4 Over 75 percent of the people actually pay the bill once they receive a  
5 notice of intent to lien. This is a long process. Customers receive about six  
6 requests for payment before they receive an intent to lien notice." Senate  
7 Committee on Government Affairs, Committee Analysis of A.B. 354, at 11  
8 (April 6, 2005).

9 This language indicates that the legislature was trying to create a real incentive for homeowners  
10 to address outstanding charges when they are notified by the garbage company that they are  
11 delinquent on the garbage bill, but also implement a process that allows an opportunity for the  
12 deficiency to be cured before foreclosure occurs. The Court finds that an interpretation that the  
13 legislature's intent in drafting the statutes was grounded in creating a fair system of payment for  
14 garbage services comports with reason and policy.

15 The Court also finds that incorporating the mechanic's lien statutes beyond NRS Chapter—  
16 108.239, furthers the legislature's specific interest in establishing a fair system. The legislative  
17 history of NRS Chapter 108 is also grounded in creating an equitable system for placing a  
18 mechanic's lien on real property when there has not been payment for construction services  
19 rendered. In the development and amendments to the mechanic's lien statutes the legislature  
20 routinely considered the impacts that the changes would have to all parties involved and tried to  
21 maintain a fair system by fine tuning notice requirements, timing rules, and establishing clear  
22 content requirements for the lien. Therefore, the application of any statutory requirements from  
23 the mechanic's lien statutes to the garbage lien statutes, where the garbage liens statute is silent,  
24 would enhance the legislative intent to create a fair system.

25 The Court next considers whether either of the statutory interpretations supplied by the  
26 parties would render any language in NRS 444.520 superfluous. Adopting West Taylor's  
27 argument that the mechanic's lien statutes must be incorporated in their entirety would render the  
28 word "may" in NRS 444.520 superfluous. Additionally, notice requirements have been written  
into the language of NRS 444.520, which would be rendered superfluous if compliance with the

1 notice statute for the mechanic's lien were required. In contrast, Waste Management's  
2 interpretation that NRS 108.239 may be applied to govern the foreclosure process for a garbage  
3 lien gives proper consideration to each word and phrase in NRS 444.520.

4 Alternatively, no portion of NRS 444.520 is rendered superfluous if the statute is interpreted  
5 to state that the garbage lien may apply the mechanic's liens statutes that addresses procedural  
6 requirements not already governed by NRS 444.520. This interpretation is in harmony with  
7 Nevada law which states that "where a general and a special statute, each relating to the same  
8 subject, are in conflict and they cannot be read together, the special statute controls." Laird v.  
9 State Pub. Emp. Ret. Bd., 98 Nev. 42, 45 (1982). This interpretation would render the specific  
10 requirements in the garbage statutes on topics, such as notice, as controlling while allowing the  
11 more generally incorporated mechanic's lien procedural statutes to apply when NRS 444.520 is  
12 silent on the issue. To offer a specific example, NRS 444.520 does not address the procedures  
13 for a hearing or dispute should the customer assert that her account is not delinquent; therefore,  
14 the customer may apply NRS 108.2275 to request a hearing to dispute the lien.<sup>6</sup> But, by that  
15 same token, the garbage lien will not automatically fail due to a lien period that runs longer than  
16 6 months<sup>7</sup>, because NRS 444.520 specifically creates a perpetual lien.<sup>8</sup>

17 Next the Court considers whether interpreting NRS 444.520 to only permit the incorporation  
18 of NRS 108.245, violates due process rights. NRS 444.520 creates a lien on real property with  
19 the ability to foreclose if the delinquent bills are not paid. Under the Nevada Constitution, the  
20 due process clause requires notice and an opportunity to be heard before the government  
21 deprives a person of his or her property. Nev. Const. art. I, § 8. If possible Nevada statutes  
22 should be construed as constitutional, and "[i]n the face of attack, every favorable presumption  
23

24 <sup>6</sup> NRS 108.2275, states in relevant part: "The debtor of the lien claimant or a party in  
25 interest in the property subject to the notice of lien who believes the notice of lien is frivolous  
26 and was made without reasonable cause, or that the amount of the notice of lien is excessive,  
may apply by motion to the district court for the county where the property or some part thereof  
is located for an order directing the lien claimant to appear before the court to show cause why  
the relief requested should not be granted."

27 <sup>7</sup> This is mandated by NRS 108.233.

28 <sup>8</sup> The Court will provide additional analysis on this issue below.

1 and intentment will be brought to bear in support of constitutionality." State v. Glusman, 98  
2 Nev. at 419-20. Therefore, since NRS 444.520 does not provide an opportunity to be heard if th  
3 property owner disputes the lien, but it does incorporate the mechanic's lien statutes, a  
4 constitutional interpretation of NRS 444.520 would incorporate more provisions of NRS Chapter  
5 108 than just NRS 108.245. Furthermore, the legislative history pertaining to NRS 108.2275  
6 specifically states that the legislature designed the procedures for contesting a mechanic's lien  
7 with the preservation of due process rights in mind.

8 Finally, the Court will consider whether permitting the incorporation of multiple  
9 provision of NRS Chapter 108 into NRS 444.520 is absurd. The Court does not find the  
10 permissive application of multiple mechanic's lien statutes to be absurd, as it is the only manner  
11 of interpretation that preserves the customer's ability to dispute a lien. After considering the  
12 legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, the  
13 Court finds the NRS 444.520 incorporates the mechanic's lien statutes to the extent that NRS  
14 444.520 is silent on a procedure.

15 **IV. NRS 108.226 creates a statute of limitations to notice a lien.**

16 West Taylor argues that Waste Management has failed to follow the statute of limitations  
17 outlined in NRS 108.226, which requires the notice of lien to be filed 90 days after the quarterly  
18 billing went delinquent in 2007 or alternatively fifteen days after the billing went delinquent per  
19 the *1994 Franchise Agreement*. Additionally, West Taylor argues that if Waste Management has  
20 an indefinite amount of time after an account becomes delinquent to file the lien, then the general  
21 statute of limitations provision in Nevada, NRS 11.190, would have no bearing on the case.

22 Waste Management contends that the NRS 108.226's statute of limitations does not  
23 apply. Alternatively, if the Court finds that NRS 108.226 does apply, Waste Management argues  
24 that the 90 day period is not triggered by the date that that payment became delinquent, instead it  
25 is triggered by the last date that services were rendered, which essentially resets every billing  
26 cycle.

1 NRS 108.226 states:

2 "[t]o perfect a lien, a lien claimant must record a notice of lien in the office  
3 of the county recorder of the county where the property or some part thereof  
4 is located in the form provided in subsection 5: (a) Within 90 days after the  
5 date on which the latest of the following occurs: (1) The completion of the  
6 work of improvement; (2) The last delivery of material or furnishing of  
equipment by the lien claimant for the work of improvement; or (3) The last  
performance of work by the lien claimant for the work of improvement."

7 The clear language of NRS 108.226 provides Waste Management with the opportunity to supply  
8 notice to its customers within 90 days after each billing cycle that becomes delinquent. Currently  
9 Waste Management operates on a quarterly billing cycle, this means that a contract starting in  
10 January would be billed at the end of March. Failure to pay the March garbage bill would cause  
11 the account to fall in arrears at that time. Under the present system the customer would not be  
12 notified of the missed payment until the next billing cycle in June; however, imposing the 90 day  
13 requirement may encourage the garbage company to send out a "notice of lien" sooner or to  
14 impose a shorter billing cycle. Generally speaking, bills are sent out prior to their due date,  
15 which would also provide customers with a small window to cure the deficiency before the  
16 notice period runs if the notice to lien had not already arrived. NRS 108.226 applies to the  
17 garbage lien statutes because it was incorporated in NRS 444.520, and it does not conflict with  
18 existing statutory language in the garbage lien enacting statute. Therefore, NRS 108.226 governs  
19 how far back in time Waste Management is able to notice and record a garbage lien.

20 V. After the lien is recorded it exists in perpetuity, but the statute of limitations  
21 places a cap on the timeframe that the home may be foreclosed upon under  
22 the lien.

23 West Taylor argues that Waste Management failed to commence an action within six months  
24 to foreclose the lien after notice of the lien is sent, therefore under NRS 108.233 the lien has  
25 expired. Waste Management asserts that the language of NRS 444.520 can only be interpreted in  
26 one reasonable manner, to mean that a garbage lien encumbers a property forever, or until it is  
27 paid. Waste Management cites State v. Yellow Jacket Silver Min. Co. to argue that the lien  
28 operates like a tax and remains attached to the land, but that the remedy of foreclosure may

1 expire with the statute of limitations. State v. Yellow Jacket Silver Min. Co., 14 Nev. 220, 232  
2 (1879).<sup>9</sup>

3 NRS 108.233 states that a mechanic's lien shall not bind a property and shall expire after six  
4 months. This language directly conflicts with the plain language of NRS 444.520 which states  
5 that the filing of a garbage lien "constitutes a perpetual lien against the property served". Since  
6 NRS 108.233 and NRS 444.520 both pertain to the same subject, how long a recorded lien will  
7 exist, NRS 444.520 is controlling as the statute that is specific to garbage liens. The language of  
8 NRS 444.520 is clear and unambiguous, and allows the lien to exist in perpetuity. In Wasson v.  
9 Hogenson, the Court considered the language of a similar statute that provided that "until paid"  
10 all charges will constitute a "perpetual lien" against the property served. Wasson v. Hogenson,  
11 196 Colo. 183, 191 (1978). It found that "[u]ntil" is a functional word to indicate continuance  
12 (as of an action, condition or state) up to a particular time. "Perpetual" means continuing forever;  
13 everlasting; eternal." Id. This Court adopts the definitions used in Wasson v. Hogenson and finds  
14 that once a garbage lien is recorded it is perpetual.<sup>10</sup>

15 However, in Yellow Jacket, the Court also finds that even if a tax exists in perpetuity that the  
16 remedy to enforce the collection of the tax may be barred by the statute of limitations. Id.  
17 Nevada's "statute of limitations embraces all characters of actions, legal and equitable." White v.  
18 Sheldon, 4 Nev. 280, 288-89 (1868). Statutes of limitations are generally adopted to serve the  
19 individual and not for public policy, and they "[prevent] surprises through the revival of claims  
20 that have been allowed to slumber until evidence has been lost, memories have faded, and  
21 witnesses have disappeared." Petersen v. Bruen, 106 Nev. 271, 273 (1990). Accordingly, under  
22 NRS 11.190, an "[a]n action upon a statute for a penalty or forfeiture, where the action is given  
23

24 <sup>9</sup> West Taylor rejects Waste Management's contention that the garbage lien can be  
25 equated to a tax and argues that lien is essentially an encumbrance on real property that requires  
26 a forum for dispute resolution. But, West Taylor has elected not to completely brief the  
27 constitutional arguments at this time.

28 <sup>10</sup> See also, N. Washington Water & Sanitation Dist. v. Majestic Sav. & Loan Ass'n, 42  
Colo. App. 158, 160 (1979) (holding that a tap lien, which could be foreclosed in the same  
manner as a mechanics' lien, did not have to abide by the six-month time limit required in the  
mechanics' lien because it was inconsistent with the statutory language that "(u)ntil paid all . . .  
charges shall constitute a perpetual lien on and against the property serve.")

1 to a person" must be brought within two years, except when the statute imposing it prescribes a  
2 different limitation. In this case, the language of NRS 444.520 does not create a new statute o  
3 limitations for foreclosing on a garbage lien nor does it specifically exempt the garbage lien from  
4 the standard statutes of limitations found in NRS 11.190. Therefore, the two year statute of  
5 limitations applies to Waste Management's ability to foreclose, which protects the homeowner  
6 from the revival of a lien several years after it was imposed.

7 In practice this means that if Waste Management properly notices a lien within the 90 days  
8 required by NRS 108.226, it then has two years under NRS 11.190 to pursue the remedy of  
9 foreclosure. Should Waste Management fail to foreclose upon the property within two years, the  
10 lien will still exist but the remedy to recover the property through foreclosure will have expired.  
11 Unless another remedy is available Waste Management will have to either wait for the customer  
12 to pay or wait for the property to be sold to collect on its lien. Moreover, the legislative history  
13 supports this interpretation of the applicable statute of limitations, because during the Assembly  
14 hearing the Assembly Committee discussed at length the importance of providing a significant  
15 opportunity for the homeowner to cure the garbage lien and ways to avoid unexpected  
16 foreclosures. Accordingly, the Court finds that once a lien is recorded it lasts in perpetuity, but  
17 that the ability to foreclose upon that lien expires after a two year statute of limitations.

## 18 *VI. Conclusion*

19 The Court finds that there is no issue of material fact presented for consideration in the  
20 motion for summary judgment, and that the questions before the Court must be determined as a  
21 matter of law. Text, context, and history support the constitutionally sound reading of NRS  
22 444.520 that permits the incorporation of NRS Chapter 108 mechanic's lien statutes to the extent  
23 that they govern lien foreclosure procedures not addressed by the language in NRS 444.520.  
24 Furthermore, the 90 day notice of lien statute of limitations found in NRS 108.226 does apply to  
25 garbage liens. After a lien is noticed Waste Management has two years to foreclose upon the

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1 property, and after that time has lapsed the lien will last in perpetuity but leave Waste  
2 Management without the recourse of foreclosure.

3 Based on the foregoing and good cause appearing,

4 IT IS HEREBY ORDERED that WEST TAYLOR'S Motion for Partial Summary  
5 Judgment is DENIED in part and GRANTED in part. WEST TAYLOR's Motion for Summary  
6 Judgment is GRANTED as to any claims for delinquent bills that WASTE MANAGEMENT  
7 failed to notice within the 90 day window, but it is DENIED with regard to properly noticed  
8 claims.

9 DATED this 28 day of July, 2014.

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11 Connie I. Stunzinger  
12 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18<sup>th</sup> day of July, 2014, I electronically filed the ORDER with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:


Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MATTHEW HIPPLER, ESQ. for KAREN GONZALEZ et al  
BRYAN WRIGHT, ESQ for KAREN GONZALEZ et al

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

C. Nicholas Perea, Esq.  
1610 Meadow Wood Lane, Ste. 202  
Reno, NV 89502

  
Marci Stone

**EXHIBIT 4**

**EXHIBIT 4**

CODE:

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

WEST TAYLOR STREET, LLC, a limited  
liability company,

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and DOES 1  
through 10,

Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

**ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL RECONSIDERATION**

On July 28, 2014, the Court entered an Order denying in part and granting in part Plaintiff West Taylor Street, LLC's (hereinafter "West Taylor") Motion for Partial Summary Judgment. The Court granted West Taylor's Motion for Summary Judgment as to any claims for delinquent bills that Defendants Waste Management of Nevada, Inc. and Karen Gonzalez (hereinafter and collectively "Waste Management") failed to notice within the ninety (90) day window, but denied the Motion for Summary Judgment with regard to the properly noticed claims. On September 26, 2014, Waste Management filed *Waste Management of Nevada, Inc.'s Motion for Partial Reconsideration of the Court's July 28, 2014 Order*. West Taylor filed an *Opposition to Motion for Partial Reconsideration* on November 5, 2014. On December 1, 2014, Waste Management filed *Reply in Support of Waste Management of Nevada, Inc.'s Motion for Partial Reconsideration of the Court's July 28, 2014 Order*. Thereafter, the matter was submitted to the Court for consideration.

DCR 13(7) provides that "[n]o motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court

1 granted upon motion therefore, after notice of such motion to the adverse parties.” WDCR 12(8)  
2 requires that the rehearing of motions to be done in conformity with DCR 13(7). WDCR 12(8)  
3 further provides in relevant part that “[a] party seeking reconsideration of a ruling of the court...  
4 must file a motion for such relief within 10 days after service of written notice of entry of the  
5 order or judgment, unless the time is shortened or enlarged by order.” The Nevada Supreme  
6 Court has held that “[a] district court may reconsider a previously decided issue if substantially  
7 different evidence is subsequently introduced or the decision is clearly erroneous.” Masonry and  
8 Title Contractors Ass’n of Southern Nevada v. Jolley, Urga, & Wirth, Ltd., 113 Nev. 737, 741  
9 (1997). Furthermore, arguments not raised in the original motion practice cannot be maintained  
10 or considered in a motion for reconsideration. See Achrem v. Expressway Plaza Ltd. P’ship, 112  
11 Nev. 737, 742 (1996); Chowdry v. NLVH, Inc., 111 Nev. 560, 562-563 (1995).

12 Waste Management asserts the clear and unambiguous language of NRS 444.520  
13 permissively incorporates only the “manner . . . for the foreclosure of mechanic’s liens.” Waste  
14 Management further argues interpreting NRS 444.520 to incorporate more than NRS 108.239  
15 renders the legislature’s chosen language meaningless. In addition, Waste Management  
16 contends Due Process does not require provisions other than NRS 108.239 to be incorporated  
17 into NRS 444.520 and the ninety (90) day deadline to record a mechanic’s lien under NRS  
18 108.226 is not triggered by a “delinquency” in payment. Lastly, Waste Management argues the  
19 Court should apply a three (3) year limitations period to statutory garbage liens. In Opposition,  
20 West Taylor argues NRS 444.520 is permissive only as to the manner of foreclosure and a ninety  
21 (90) day limitation for the time to record a delinquent garbage lien is not inconsistent with NRS  
22 444.520.

23 After examining the instant pleadings, and the underlying pleadings associated with the  
24 July 28, 2014 Order, the Court finds that Waste Management is rearguing issues that the Court  
25 has already decided. Waste Management contends that the determinations made by the Court in  
26 the July 28, 2014 Order are wrong. However, Waste Management fails to assert any new law or  
27 facts to support their arguments. Additionally, the Court finds that Waste Management has not  
28 demonstrated that the Court’s July 28, 2014, Order was clearly erroneous. The Court finds that

1 the July 28, 2014 Order was supported by applicable Nevada law and is not appropriate for  
2 reconsideration. Therefore, the Court finds that Waste Management's Motion must be denied.  
3 See Masonry and Title Contractors Ass'n of Southern Nevada, 113 Nev. at 741; DCR 13(7);  
4 WDCR 12(8).

5 Based on the foregoing and good cause appearing,

6 IT IS HEREBY ORDERED that Defendants WASTE MANAGEMENT OF NEVADA,  
7 INC., and KAREN GONZALEZ' Motion for Partial Reconsideration of the Court's July 28,  
8 2014 Order is DENIED.

9  
10 DATED this 6 day of February, 2015.

11 Connie J. Steinheimer  
12 DISTRICT JUDGE  
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV12-02995

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 19 day of February, 2015, I  
5 electronically filed the **ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL**  
6 **RECONSIDERATION** with the Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by  
8 the method(s) noted below:

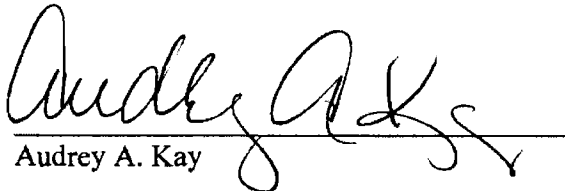
9 **Personal delivery to the following: [NONE]**

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**  
11 **notice of electronic filing to the following:**

12 SEAN D. THUESON, ESQ. for WASTE MANAGEMENT OF NEVADA, INC.  
13 MATTHEW B. HIPPLER, ESQ. for KAREN GONZALEZ et al  
14 BRYAN L. WRIGHT, ESQ. for KAREN GONZALEZ et al

15 **Deposited in the Washoe County mailing system for postage and mailing with the United**  
16 **States Postal Service in Reno, Nevada:**

17 C. NICHOLAS PEREOS, ESQ.  
18 1610 Meadow Wood Lane, Ste. 202  
19 Reno, Nevada 89502

20   
Audrey A. Kay

**EXHIBIT 5**

**EXHIBIT 5**



1 CODE: 2535  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEYS FOR PLAINTIFF

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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

WEST TAYLOR STREET, LLC,  
a limited liability company,

Case No. CV12 02995  
Dept. No. 4

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and  
DOES 1 THROUGH 10,

Defendants.

NOTICE OF ENTRY OF JUDGMENT/ORDER


TO: DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on the 6<sup>th</sup> day of February, 2015, an Order Denying Defendants' Motion for Partial Reconsideration was entered in the above-entitled action in favor of Plaintiff and against Defendants, a copy of which is marked as **Exhibit "1"** attached hereto and made a part hereof.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 22<sup>nd</sup> day of July, 2016

C. NICHOLAS PEREOS, LTD.


By:   
C. NICHOLAS PEREOS, ESQ.  
1610 MEADOW WOOD LANE  
RENO, NV 89502  
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

ROBISON, BELAUSTEGUI, SHARP & LOW  
Mark G. Simons, Esq.  
71 Washington, Street  
Reno, NV 89503  
Attorneys for Waste Management  
and Karen Gonzalez

DATED: 6/22/16

  
Iris M. Norton

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Schedule of Exhibits

Exhibit 1 ..... Order denying Defendants' Motion for Partial Reconsideration

**EXHIBIT "1"**

FILED  
Electronically  
CV12-02995  
2016-06-22 11:50:04 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5574316

**EXHIBIT "1"**

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1 CODE:  
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5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF WASHOE**

7 WEST TAYLOR STREET, LLC, a limited  
8 liability company,

9 Plaintiff,

10 vs.

11 WASTE MANAGEMENT OF NEVADA,  
12 INC., KAREN GONZALEZ, and DOES 1  
through 10,

13 Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

14 **ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL RECONSIDERATION**

15 On July 28, 2014, the Court entered an Order denying in part and granting in part  
16 Plaintiff West Taylor Street, LLC's (hereinafter "West Taylor") Motion for Partial Summary  
17 Judgment. The Court granted West Taylor's Motion for Summary Judgment as to any claims for  
18 delinquent bills that Defendants Waste Management of Nevada, Inc. and Karen Gonzalez  
19 (hereinafter and collectively "Waste Management") failed to notice within the ninety (90) day  
20 window, but denied the Motion for Summary Judgment with regard to the properly noticed  
21 claims. On September 26, 2014, Waste Management filed *Waste Management of Nevada, Inc.'s*  
22 *Motion for Partial Reconsideration of the Court's July 28, 2014 Order*. West Taylor filed an  
23 *Opposition to Motion for Partial Reconsideration* on November 5, 2014. On December 1, 2014,  
24 Waste Management filed *Reply in Support of Waste Management of Nevada, Inc.'s Motion for*  
25 *Partial Reconsideration of the Court's July 28, 2014 Order*. Thereafter, the matter was  
26 submitted to the Court for consideration.

27 DCR 13(7) provides that "[n]o motion once heard and disposed of shall be renewed in the  
28 same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court"

1 granted upon motion therefore, after notice of such motion to the adverse parties." WDCR 12(8)  
2 requires that the rehearing of motions to be done in conformity with DCR 13(7). WDCR 12(8)  
3 further provides in relevant part that "[a] party seeking reconsideration of a ruling of the court...  
4 must file a motion for such relief within 10 days after service of written notice of entry of the  
5 order or judgment, unless the time is shortened or enlarged by order." The Nevada Supreme  
6 Court has held that "[a] district court may reconsider a previously decided issue if substantially  
7 different evidence is subsequently introduced or the decision is clearly erroneous." Masonry and  
8 Title Contractors Ass'n of Southern Nevada v. Jolley, Urga, & Wirth, Ltd., 113 Nev. 737, 741  
9 (1997). Furthermore, arguments not raised in the original motion practice cannot be maintained  
10 or considered in a motion for reconsideration. See Achrem v. Expressway Plaza Ltd. P'ship, 112  
11 Nev. 737, 742 (1996); Chowdry v. NLVH, Inc., 111 Nev. 560, 562-563 (1995).

12 Waste Management asserts the clear and unambiguous language of NRS 444.520  
13 permissively incorporates only the "manner . . . for the foreclosure of mechanic's liens." Waste  
14 Management further argues interpreting NRS 444.520 to incorporate more than NRS 108.239  
15 renders the legislature's chosen language meaningless. In addition, Waste Management  
16 contends Due Process does not require provisions other than NRS 108.239 to be incorporated  
17 into NRS 444.520 and the ninety (90) day deadline to record a mechanic's lien under NRS  
18 108.226 is not triggered by a "delinquency" in payment. Lastly, Waste Management argues the  
19 Court should apply a three (3) year limitations period to statutory garbage liens. In Opposition,  
20 West Taylor argues NRS 444.520 is permissive only as to the manner of foreclosure and a ninety  
21 (90) day limitation for the time to record a delinquent garbage lien is not inconsistent with NRS  
22 444.520.

23 After examining the instant pleadings, and the underlying pleadings associated with the  
24 July 28, 2014 Order, the Court finds that Waste Management is rearguing issues that the Court  
25 has already decided. Waste Management contends that the determinations made by the Court in  
26 the July 28, 2014 Order are wrong. However, Waste Management fails to assert any new law or  
27 facts to support their arguments. Additionally, the Court finds that Waste Management has not  
28 demonstrated that the Court's July 28, 2014, Order was clearly erroneous. The Court finds that

1 the July 28, 2014 Order was supported by applicable Nevada law and is not appropriate for  
2 reconsideration. Therefore, the Court finds that Waste Management's Motion must be denied  
3 See Masonry and Tile Contractors Ass'n of Southern Nevada, 113 Nev. at 741; DCR 13(7);  
4 WDCR 12(8).

5 Based on the foregoing and good cause appearing,

6 IT IS HEREBY ORDERED that Defendants WASTE MANAGEMENT OF NEVADA,  
7 INC., and KAREN GONZALEZ' Motion for Partial Reconsideration of the Court's July 28,  
8 2014 Order is DENIED.

9 DATED this 6 day of February, 2015.

11 Connie I. Steinheimer  
12 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of February, 2015, I electronically filed the **ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL RECONSIDERATION** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

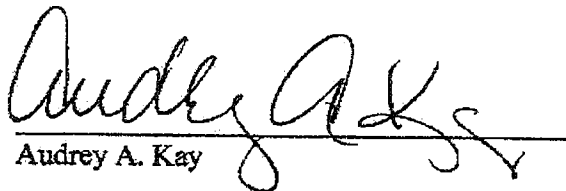
**Personal delivery to the following: [NONE]**

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

SEAN D. THUESON, ESQ. for WASTE MANAGEMENT OF NEVADA, INC.  
MATTHEW B. HIPPLER, ESQ. for KAREN GONZALEZ et al  
BRYAN L. WRIGHT, ESQ. for KAREN GONZALEZ et al

**Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:**

C. NICHOLAS PEREOS, ESQ.  
1610 Meadow Wood Lane, Ste. 202  
Reno, Nevada 89502

  
Audrey A. Kay



**EXHIBIT 6**

**EXHIBIT 6**

2200

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

WEST TAYLOR STREET, LLC, a limited  
liability company,

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and DOES 1  
THROUGH 10,

Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

**PARTIAL SUMMARY JUDGMENT**

Plaintiff filed a second amended complaint on June 27, 2014 asking this Court to address the legitimacy of a Garbage Lien that was recorded by the Defendant and praying for a declaratory judgment concerning the statutory scheme of NRS 444.520. The second amended complaint echoes the first amended complaint with regard to the claims for relief that are the subject of a motion for partial summary judgement filed by Plaintiff on March 11, 2014. An opposition was filed by Defendants on March 28, 2014 and a reply filed by Plaintiff on April 11, 2014. Given the novel issues raised in the motion for partial summary judgment, the Court conducted arguments on April 23, 2014 and proceeded to render a decision on July 28, 2014. On September 3, 2014, Plaintiff submitted a second motion for partial summary judgment seeking to have the Court set forth in a judgment the order and decision of July 28, 2014 as requested in the second amended complaint to address the first and second claims in the second amended complaint. Defendant filed an opposition to the second motion for partial summary judgment on September 25, 2014 coupled with a motion to reconsider the decision of this Court on July 28,

1 2014. On February 6, 2015 this Court denied Defendant's motion for partial reconsideration at  
2 which time Plaintiff's second motion for partial summary judgment was renewed with a reply  
3 argument filed on May 13, 2015 and submitted to this Court for decision. The Court having  
4 considered Plaintiff's second motion for partial summary judgment which motion was phrased  
5 consistent with the decision and order of this Court of July 28, 2014 and consistent with the first  
6 two claims for relief identified in the second amended complaint and there being no just reason  
7 for any further delay for the entry of a declaratory judgment pursuant to Chapter 30 of the Nevada  
8 Revised Statutes does hereby decree, adjudge and declare that a judgement be entered as follows:

9 1. A lien for unpaid garbage fees recorded pursuant to NRS 444.520 has a  
10 time limitation of two years pursuant to NRS 11.190 by which the purveyor of the  
11 lien is to pursue proceedings for foreclosure within the two year time frame from  
12 the recording of the lien.

13 2. A recorded lien for unpaid garbage fees pursuant to NRS 444.520 shall be  
14 for an amount that became delinquent no more than 90 days prior to the date of  
15 the recording of the lien as required by NRSA 108.226 that is incorporated in  
16 NRS 444.520.

17 3. The pursuit of a remedy for foreclosure of a garbage lien under NRS  
18 444.520 will afford property owner's liened an opportunity to be heard and to  
19 contest the legitimacy of the lien as provided by Chapter 108 of the Nevada  
20 Revised Statutes.

21 Pursuant to the first and second claim for relief of the second amended complaint, a  
22 judgment consistent with the foregoing is hereby be entered.

23 DATED this 1 day of October, 2015.

24 Connie J. Steinheimer  
25 DISTRICT JUDGE  
26  
27  
28

**CERTIFICATE OF SERVICE**

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 1 day of October, 2015, I filed the **PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       **Personal delivery to the following: [NONE]**

☒ **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

MARK SIMONS, ESQ. for WASTE MANAGEMENT OF NEVADA INC

MATTHEW HIPPLER, ESQ. for KAREN GONZALEZ et al

☒ **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

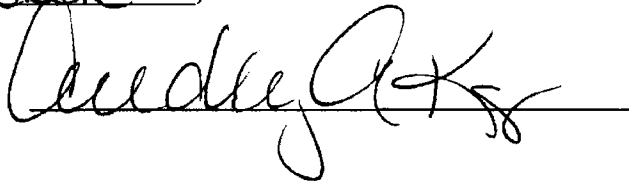
C. Nicholas Pereos, Esq.  
1610 Meadow Wood Lane, Ste. 202  
Reno, NV 89502

       **Placed a true copy in a sealed envelope for service via:**

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 1 day of October, 2015.



**EXHIBIT 7**

**EXHIBIT 7**

1 CODE: 2535  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEYS FOR PLAINTIFF

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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

WEST TAYLOR STREET, LLC,  
a limited liability company,

Case No. CV12 02995  
Dept. No. 4

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and  
DOES 1 THROUGH 10,

Defendants.

NOTICE OF ENTRY OF JUDGMENT


TO: DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on the 1<sup>st</sup> day of October, 2015, a Partial  
Summary Judgment was entered in the above-entitled action in favor of Plaintiff and  
against Defendants, a copy of which is marked as **Exhibit "1"** attached hereto and made  
a part hereof.

The undersigned affirms that the foregoing pleading does not contain a social  
security number.

DATED this 16<sup>th</sup> day of November, 2015

C. NICHOLAS PEREOS, LTD.

By:   
C. NICHOLAS PEREOS, ESQ.  
1610 MEADOW WOOD LANE  
RENO, NV 89502  
ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

ROBISON, BELAUSTEGUI, SHARP & LOW  
Mark G. Simons, Esq.  
71 Washington, Street  
Reno, NV 89503  
*Attorneys for Waste Management  
and Karen Gonzalez*

DATED: 11/16/15

Iris M. Norton  
Iris M. Norton

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Schedule of Exhibits

Exhibit 1 ..... Partial Summary Judgment



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2015-12-03 02:08:34 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 5262121

**EXHIBIT "1"**

**EXHIBIT "1"**

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 WEST TAYLOR STREET, LLC, a limited  
9 liability company,

10 Plaintiff,

11 vs.

12 WASTE MANAGEMENT OF NEVADA,  
13 INC., KAREN GONZALEZ, and DOES 1  
14 THROUGH 10,

Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

15 PARTIAL SUMMARY JUDGMENT

16 Plaintiff filed a second amended complaint on June 27, 2014 asking this Court to address  
17 the legitimacy of a Garbage Lien that was recorded by the Defendant and praying for a  
18 declaratory judgment concerning the statutory scheme of NRS 444.520. The second amended  
19 complaint echoes the first amended complaint with regard to the claims for relief that are the  
20 subject of a motion for partial summary judgement filed by Plaintiff on March 11, 2014. An  
21 opposition was filed by Defendants on March 28, 2014 and a reply filed by Plaintiff on April 11,  
22 2014. Given the novel issues raised in the motion for partial summary judgment, the Court  
23 conducted arguments on April 23, 2014 and proceeded to render a decision on July 28, 2014. On  
24 September 3, 2014, Plaintiff submitted a second motion for partial summary judgment seeking to  
25 have the Court set forth in a judgment the order and decision of July 28, 2014 as requested in the  
26 second amended complaint to address the first and second claims in the second amended  
27 complaint. Defendant filed an opposition to the second motion for partial summary judgment on  
28 September 25, 2014 coupled with a motion to reconsider the decision of this Court on July 28,

1 2014. On February 6, 2015 this Court denied Defendant's motion for partial reconsideration at  
2 which time Plaintiff's second motion for partial summary judgment was renewed with a reply  
3 argument filed on May 13, 2015 and submitted to this Court for decision. The Court having  
4 considered Plaintiff's second motion for partial summary judgment which motion was phrased  
5 consistent with the decision and order of this Court of July 28, 2014 and consistent with the first  
6 two claims for relief identified in the second amended complaint and there being no just reason  
7 for any further delay for the entry of a declaratory judgment pursuant to Chapter 30 of the Nevada  
8 Revised Statutes does hereby decree, adjudge and declare that a judgement be entered as follows:

9 1. A lien for unpaid garbage fees recorded pursuant to NRS 444.520 has a  
10 time limitation of two years pursuant to NRS 11.190 by which the purveyor of the  
11 lien is to pursue proceedings for foreclosure within the two year time frame from  
12 the recording of the lien.

13 2. A recorded lien for unpaid garbage fees pursuant to NRS 444.520 shall be  
14 for an amount that became delinquent no more than 90 days prior to the date of  
15 the recording of the lien as required by NRSA 108.226 that is incorporated in  
16 NRS 444.520.

17 3. The pursuit of a remedy for foreclosure of a garbage lien under NRS  
18 444.520 will afford property owner's lien an opportunity to be heard and to  
19 contest the legitimacy of the lien as provided by Chapter 108 of the Nevada  
20 Revised Statutes.

21 Pursuant to the first and second claim for relief of the second amended complaint, a  
22 judgment consistent with the foregoing is hereby be entered.

23 DATED this 1 day of October, 2015.

24  
25 Connie I. Steinheimer  
26 DISTRICT JUDGE  
27  
28

CERTIFICATE OF SERVICE

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 1 day of October, 2015, I filed the PARTIAL SUMMARY JUDGMENT with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       Personal delivery to the following: [NONE]

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

MARK SIMONS, ESQ. for WASTE MANAGEMENT OF NEVADA INC  
MATTHEW HIPPLER, ESQ. for KAREN GONZALEZ et al

☒ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

C. Nicholas Pereos, Esq.  
1610 Meadow Wood Lane, Ste. 202  
Reno, NV 89502

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 1 day of October, 2015.



# EXHIBIT 8

# EXHIBIT 8

1 CODE: 1880  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9 \*\*\*\*\*

10 WEST TAYLOR STREET, LLC,  
11 a limited liability company,

Case No. CV12 02995

12 Plaintiff,

Dept. No. 4

13 vs.

14 WASTE MANAGEMENT OF NEVADA,  
15 INC., KAREN GONZALEZ, and  
16 DOES 1 THROUGH 10,

17 Defendants.

18 **JUDGMENT**

19 The above entitled matter having come before this Court on Plaintiff's Complaint  
20 for Declaratory Judgment concerning the application of NRS 444.520 to a lien filed by  
21 Defendant, Waste Management of Nevada, Inc., and the Court having received briefs  
22 and heard oral arguments regarding the same and there being no just reason for delay  
23 does hereby make the following declaratory judgment pursuant to Chapter 20 of Nevada  
24 Revised Statutes.

25 IT IS HEREBY DECLARED, ADJUDGED, AND DECREED that the lien filed by  
26 Defendant, Waste Manage of Nevada, Inc., be subject to the following:

- 27 1. A lien for unpaid garbage fees recorded pursuant to NRS 444.520  
has a time limitation of two years pursuant to NRS 11.190 by which the  
purveyor of the lien is to pursue proceedings for foreclosure within the two

1 year time frame from the recording of the lien.

2 2. A recorded lien for unpaid garbage fees pursuant to NRS 444.520  
3 shall be for an amount that became delinquent no more than 90 days prior  
4 to the date of the recording of the lien as required by NRSA 108.226 that  
5 is incorporated in NRS 444.520.

6 3. The pursuit of a remedy for foreclosure of a garbage lien by the  
7 filing of an action for foreclosure of the lien under NRS 444.520 will afford  
8 property owner's lien an opportunity to be heard and to contest the  
9 legitimacy of the lien as provided by Chapter 108 of the Nevada Revised  
10 Statutes.

11  
12 Dated this 29 day of December, 2017.

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15 Connie L. Steinheimer  
16 DISTRICT COURT JUDGE  
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# EXHIBIT 9

# EXHIBIT 9



1 CODE: ~~XXXX~~  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678  
7 ATTORNEY FOR PLAINTIFF

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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC,  
a limited liability company,

Case No. CV12 02995

Plaintiff,

Dept. No. 4

vs.

WASTE MANAGEMENT OF NEVADA,  
INC., KAREN GONZALEZ, and  
DOES 1 THROUGH 10,

Defendants.

NOTICE OF ENTRY OF JUDGMENT

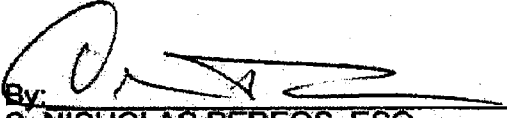
TO: DEFENDANT ABOVE-NAMED AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on the 29<sup>th</sup> day of December, 2017, a Declaratory Judgment was entered in the above-entitled action pursuant to Chapter 20 of the Nevada Revised Statutes, a copy of which is marked as Exhibit "1" attached hereto and made a part hereof.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 5<sup>th</sup> day of January, 2018

C. NICHOLAS PEREOS, LTD.

By:   
C. NICHOLAS PEREOS, ESQ.  
1610 MEADOW WOOD LANE  
RENO, NV 89502  
ATTORNEY FOR PLAINTIFF

1  
2  
3 **CERTIFICATE OF SERVICE**

4 PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am  
5 an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused  
6 to be served a true copy of the foregoing pleading on all parties to this action by the  
7 methods indicated below:

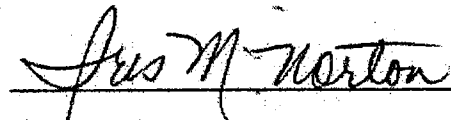
8 I electronically emailed at Reno, Nevada, a true copy of the foregoing document  
9 addressed to:

10 Douglas K. Fermoile, Esq.  
11 427 Ridge Street, Suite B  
12 Reno, NV 89501  
13 *Attorney for West Taylor Street, LLC*

14 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF  
15 system which served the following parties electronically:

16 ROBISON, SIMONS, SHARP & BRUST  
17 Mark G. Simons, Esq.  
18 *Attorneys for Waste Management*  
19 *and Karen Gonzalez*

20 DATED this 8th day of January, 2018

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Schedule of Exhibits

Exhibit 1 ..... Declatory Judgment

FILED  
Electronically  
CV12-02995  
2018-01-08 09:22:30 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6469497

**Exhibit 1**

**Exhibit 1**

1 CODE: 1880  
2 C. NICHOLAS PEREOS, ESQ.  
3 Nevada Bar #0000013  
4 1610 MEADOW WOOD LANE, STE. 202  
5 RENO, NV 89502  
6 (775) 329-0678

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

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10 WEST TAYLOR STREET, LLC,  
11 a limited liability company,

Case No. CV12 02995

Dept. No. 4

12 Plaintiff,

13 vs.

14 WASTE MANAGEMENT OF NEVADA,  
15 INC., KAREN GONZALEZ, and  
16 DOES 1 THROUGH 10,

17 Defendants.

18 **JUDGMENT**

19 The above entitled matter having come before this Court on Plaintiff's Complaint  
20 for Declaratory Judgment concerning the application of NRS 444.520 to a lien filed by  
21 Defendant, Waste Management of Nevada, Inc., and the Court having received briefs  
22 and heard oral arguments regarding the same and there being no just reason for delay  
23 does hereby make the following declaratory judgment pursuant to Chapter 20 of Nevada  
24 Revised Statutes.

25 IT IS HEREBY DECLARED, ADJUDGED, AND DECREED that the lien filed by  
26 Defendant, Waste Manage of Nevada, Inc., be subject to the following:

- 27 1. A lien for unpaid garbage fees recorded pursuant to NRS 444.520  
has a time limitation of two years pursuant to NRS 11.190 by which the  
purveyor of the lien is to pursue proceedings for foreclosure within the two

1 year time frame from the recording of the lien.

2 2. A recorded lien for unpaid garbage fees pursuant to NRS 444.520  
3 shall be for an amount that became delinquent no more than 90 days prior  
4 to the date of the recording of the lien as required by NRS 108.226 that  
5 is incorporated in NRS 444.520.

6 3. The pursuit of a remedy for foreclosure of a garbage lien by the  
7 filing of an action for foreclosure of the lien under NRS 444.520 will afford  
8 property owner's lien an opportunity to be heard and to contest the  
9 legitimacy of the lien as provided by Chapter 108 of the Nevada Revised  
10 Statutes.

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12 Dated this 29 day of December, 2017.

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14 Connie J. Steinheimer  
15 DISTRICT COURT JUDGE  
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