

MINUTES OF THE CITY COUNCIL  
OF THE CITY OF RUIDOSO DOWNS  
OCTOBER 11, 2005

The Council of the City of Ruidoso Downs met in regular session on October 11, 2005. Mayor Miller called the meeting to order at 5:30 p.m. and asked Emmit Sparks to lead the Pledge of Allegiance. Upon roll call, the following were present:

Councilor Miller	Councilor Morales
Councilor Olivo	Councilor Garrett

Administrator Waters informed Mayor Miller there was a quorum.

Also present:

Dan Bryant, City Attorney  
John P. Waters, City Administrator  
Carol Virden, City Clerk/Treasurer  
Robert Denny, Department of Public Safety Director  
Dan Gens, Public Works Director  
Tom Armstrong, Licensing, Planning & Permitting Supervisor

APPROVAL OF AGENDA

Mayor Miller entertained a motion to approve the agenda. Councilor Miller moved to approve the Agenda. Seconded by Councilor Morales. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

APPROVAL OF CONSENT AGENDA

Mayor Miller entertained a motion to approve the Consent Agenda. Councilor Garrett moved to approve the Consent Agenda. Seconded by Councilor Olivo. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

APPROVAL OF MINUTES OF SEPTEMBER 26, 2005 REGULAR MEETING

Motion was made by Councilor Garrett and seconded by Councilor Olivo to approve the Minutes of the September 26, 2005 regular meeting. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

ACCOUNTS PAYABLE

Motion was made by Councilor Garrett and seconded by Councilor Olivo to approve the Accounts Payable. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

## UNFINISHED BUSINESS

Councilor Garrett asked for an update on the drainage. Administrator Waters said we do have a pre-construction meeting scheduled with the engineers and the contractors for Friday at 11:00 a.m. This will be to get started on the project. We have informed them that we are anxious to get started very soon so that our program manager at DFA, Gerald Garcia, is happy and will give us an extension. As you know we are hanging on to the end of this CDBG grant from 2003. We are hopefully going to get this project moving fairly soon. We have been talking with Mr. McCutcheon, the owner of the property, making some preparations to move the fence over. I have already authorized Dan's men to help Mr. McCutcheon move his fence over however many feet. He has asked just to move the electric fence over to get it out of our construction easement. There has to be some coordination between Mr. McCutcheon and the engineers and our contractor to get his part of the wall built. Hopefully we will get that scheduled in the pre-con meeting. Attorney Bryant said I have assigned that task to Linda, Misty and Julie.

Councilor Garrett asked where are we on the codification. Clerk Virden said we will be meeting with our attorney to take the last phase. Attorney Bryant said we conducted two meetings between Carol, John and I. What we have discovered in the draft codification is a series of articles in our Code of Ordinances that do not speak to one another. We are fixing those and making those consistent before we send it back to American Legal.

Councilor Garrett asked is the process to send it back to us and we approve the codification. Attorney Bryant said the stuff we are doing will go back to American Legal, they will input it into the draft, and then the draft will come back to you for approval.

Councilor Garrett said at that point we will codify those ordinances as they are and all of the others will be passé in a sense; we will codify the final ordinance. Attorney Bryant said the Code becomes the official document of what are the laws of the City once you all approve the Code.

Administrator Waters said for Mr. Bryant it is a significant series. There are a lot of ordinances that do not agree with other ordinances. These, in some cases, will require a new ordinance. I know it has taken a long time but there are a significant amount of issues that we need to correct. I anticipate it will take a full meeting just to go through the ordinance changes.

Councilor Olivo asked for an update on the water tank. Administrator Waters said Mr. Gens has been keeping watch on this. He had some news for me on Thursday when we were in Albuquerque. Mr. Gens said the construction crew had started to set rebar and forms in the ring wall. Last Wednesday they were anticipating bringing in cement. We asked for an inspection per the contract. The engineers sent the inspector out. The rebar and forms did not pass inspection so they had to pull all of it out of the hole. They are refabricating the rebar and everything else to match the specs in the plans. I spoke with the

engineer today and once things are replaced in the hole, it will be re-inspected before concrete is allowed to be placed.

#### OTHER BUSINESS

Mayor Miller stated next item on the agenda, proclaiming the Month of October 2005 as Domestic Violence Awareness. Administrator Waters said we have before us a proclamation to that affect. In addition, we have three guests here from the Board. We have Dr. Harrison, Juanice Battin and Debbie Haines from the H.E.A.L. Board. They are here to perhaps speak after your proclamation. Mr. Waters then read the proclamation:

#### **PROCLAMATION**

**WHEREAS,** Domestic Violence is a problem worldwide, occurring in all regions, countries, societies, and cultures and affecting women irrespective of income, class, race or ethnicity; and

**WHEREAS,** the United Nations has defined violence against women as "any act of gender-based violence that results in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life;" and

**WHEREAS,** the many forms of violence to which women are subjected are not simply examples of random victimization but are associated with inequality between women and men and are strategies to perpetuate or entrench that inequity; and

**WHEREAS,** government has an obligation to prevent, investigate, and punish acts of violence and to provide protection for victims, and, as such, we all have an obligation to change attitudes and behaviors that perpetuate the violence; and

**WHEREAS,** the city supports the development of strategies and the enhancement of programs and services and is taking a leadership role to end domestic violence;

**NOW, THEREFORE,** I Bob A. Miller, Mayor of Ruidoso Downs, do hereby proclaim the month of October 2005 as Domestic Violence Awareness Month in the City of Ruidoso Downs, and encourage all to join the fight to stop domestic violence.

I will add also you have a fourth member here, Carol Virden that sits on that Board as well.

Mayor Miller asked is there anyone that would like to come forward.

Debbie Haines said I am with the Board of H.E.A.L. H.E.A.L. stands for Help End Abuse for Life. First of all I want to thank the City of Ruidoso Downs for being so pro-active. The

governor's office and also Secretary Dale Olsen of Children, Youth and Families, any time we meet with these people about this issue one of the first things they talk about is how Ruidoso Downs has welcomed this project. We are finally here to tell you that yes, we have purchased the building, yes, have closed on the building and are moving forward. Today, in fact, we met with the Building Committee. Your own Bob Huckins is one of the participants on that Building Committee. Ivan Munoz is one of our Board members and also lives in Ruidoso Downs and, of course, Carol. We have Irene back there with us too. She is part of our larger group that is attending to some of the other issues involved with domestic violence. We want to thank you for that first of all. Also any words of encouragement towards Santa Fe because as you can well imagine the hurricanes that we have experienced have really affected the cost of building supplies. I think everyone remembers who attended the Open House that the governor was pretty hot and he suggested and encouraged that he would be looking for us for capital outlay for air conditioning at the very least. We do want to let you know that we are having our first benefit called Survivor. That will be October 22nd at 8:00 p.m. at the Spencer Theatre. Steve Duffy, one of our other Board members, has just been instrumental in producing this show. It is jammed packed full of local talents, singing, dancing, all sorts of wonderful things. I have tickets if anyone needs tickets. We planned that night to have opportunities for people to donate to the cause besides obviously attending a wonderful evening of entertainment. We will have towels, sheets, bedding all of the necessities we will need for the domestic violence shelter. We have Sister Juanita Little on our Board. Even though Mescalero Reservation is in Otero County, they are our neighbors. We plan to fully embrace the issues that they are dealing with domestic violence too. I want to thank Mr. Armstrong; he has been very forthcoming with information, helping us and letting us know what we need to do to cut the learning curve. We have monies coming down through Children, Youth and Families that is part of a Senate bill thanks to your legislators, Adair, Foley, Wilson. The whole group was very supportive last year. Even though we don't have the building up and running, this money was for operations but since we are not up and running they have been very generous about working with us to use that money so we don't lose it for getting the building on line. Give them your thanks. I do have a list of our Board members that I would like to leave with you. Now that we are progressing the way we are we would like to come back periodically and give you updates. Thank you again.

Mayor Miller said we would appreciate that very much. It has been a long time coming and I welcome it with open arms.

Mayor Miller stated next item on the agenda, proclaiming October 12, 2005 as the 1st Annual Children's Health Fair. Councilor Miller said since we are partners with Head Start I was asked by Head Start to bring this proclamation down to our City. Councilor Miller then read the proclamation:

**WHEREAS**, Partners In Early childhood Education (P.I.E.C.E.) and other local organizations are celebrating the first annual Children's Health Fair on Wednesday, October 12, 2005; and,

**WHEREAS**, by calling attention to the need for high-quality early childhood screening, early intervention, and childhood services for all children and families within our community, these groups hope to improve the quality and availability of such services; and,

**WHEREAS**, the future of our community depends on the quality of the early childhood experiences provided to young children today; and,

**WHEREAS**, high-quality early childhood services represent a worthy commitment to our children's future.

**NOW, THEREFORE**, I, Bob A. Miller, Mayor of the City of Ruidoso Downs, do hereby proclaim October 12, 2005 as the 1st annual

"CHILDREN'S HEALTH FAIR"

"IT TAKES A VILLAGE TO RAISE A CHILD"

PROCLAIMED this 11<sup>th</sup> day of October, 2005 in Ruidoso Downs, New Mexico.

Councilor Miller said the Health Fair is tomorrow at the Civic Center between 3:00 p.m. and 7:00 p.m. It is our first annual health fair. There will be vision, hearing, dental, and developmental screenings of all kinds. There will be Stranger Danger and fire protection people to talk to children. Also there will be medical information for families.

Mayor Miller stated next item on the agenda, recognition of September 2005 Employee of the Month, Public Works Department. Mr. Gens said I would like to present our Employee of the Month for September 2005 for the Public Works. Joe Ray has not been with us very long but he has made a very favorable impression. I forced all of the guys to vote and Joe Ray was the winner so I guess that says something if you are voted by your peers to be Employee of the Month. Joe Ray is a very hard worker. I look for him to grow with the City and become even more valuable. I am pleased to present him with the Public Works Employee of the Month award.

Mayor Miller said we have a distinguished person here in our midst. As a matter of fact she is the third one in the State of New Mexico to obtain the heights that she has in city government and asked Administrator Waters to read the letter.

Administrator Waters said this is from the International Institute of Municipal Clerks, the IIMC that bestows the certifications on clerks. This letter is addressed Honorable Mayor Miller.

"Dear Mayor Miller: Carol Virden, MMC, City Clerk/Treasurer of the City of Ruidoso Downs, NM, has earned designation as a Master Municipal Clerk (MMC). This, the highest recognition given by the International Institute of Municipal Clerks, Inc., signifies

completion of the third level of the IIMC Master Municipal Clerk Academy and recognizes Carol's exemplary performance as a municipal clerk at the local, state, national and global levels.

The Master Municipal Clerk Academy was established to extend the professional development of municipal clerks in areas of public service now possible and increasingly expected in the public and private sectors. Graduates must demonstrate that their knowledge, abilities and professional accomplishments enable them to be proactive in problem solving, planning, communicating, facilitating, and otherwise, to work effectively as a vital member of the local management team.

Carol has made a personal commitment to life-long learning and mentoring; has completed numerous academy and university-based programs, advanced seminars and workshops; has demonstrated proficiency in teaching and writing in the profession, and for facilitating meetings and achieving consensus; and is honored and recognized by her peers for extraordinary service to the profession.

In receiving the MMC designation Carol joins an elite group of Municipal Clerks in the State of New Mexico and only 402 IIMC members throughout the world who have achieved this level.

On behalf of the Board of Directors and the 10,300 members of IIMC, I am pleased to commend to you the achievements of Carol Virden, MMC. We share your pride in her accomplishments and in the important role she plays in enhancing the democratic process in your city. Sincerely, Susan L. Morrow, MMC, President, IIMC"

Carol Virden said I want to take this opportunity to thank Mayor Miller and my City Councilors for allowing me to continue my education in my chosen profession as municipal clerk. I have made a commitment to learning and sharing my knowledge and skills with my colleagues and the wider community of the City of Ruidoso Downs. Without your support my designation of Master Municipal Clerk would not have happened. Again, thank you very much.

#### NEW BUSINESS

Mayor Miller stated next on the agenda, consider recommendation of appointment to Ruidoso Downs Economic Development Board. At this time I would like to submit the name of Harvey Twite.

Councilor Garrett moved to approve the appointment of Harvey Twite as a member of the Ruidoso Downs Economic Development Board. Seconded by Councilor Olivo. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider awarding Bid No. 06-005 for Maintenance Shop Interior Improvements.

Administrator Waters said as you are probably aware, you approved this project to go out to bid two years ago. It has been designed, went back, designed and went back. Prior to the start of this year they were finally ready to go out for bid but the end of the fiscal year came down. After the fiscal year changed over they were ready to go, therefore, we are asking the Council to approve this. This will require a budget adjustment because of the fact that this was in the budget two years. I anticipate that instead of just paying for this out of the General Fund I am going to ask, because a big portion of this is going to be an enclosed computer control system room for our new Scata system that the Water and Sewer Fund pay for part of this. I am going to ask that you allow us to make this purchase contingent upon next meeting's budget adjustment whereas I will bring monies from both Water and Sewer Improvement Fund and General Fund to pay for this particular project. It is necessary. The other side of the coin is we have a director there. We want to make sure that if there are any conferences or employee evaluations that they occur in a private environment. This is not going to be two stories as originally envisioned in the first group of plans that you saw back in 2001. This is simply to build the office building for the director, a control room for the computer system and a general use room for the employees training room or meeting room. It isolates the office from the fumes and dust, which also helps to keep our computers in good shape.

Councilor Morales moved to award Bid No. 06-005 for Maintenance Shop Interior Improvements to lowest bidder, ESA Construction, with a bid of \$46,500. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, Planning and Zoning, consider approving P&Z recommendation to approve the conditional use requested by Plateau Telecommunications, Inc. for cellular service. Bonnie Richardson said I am sitting in for Paul van Gulick; he is in Albuquerque. This request is for a proposed tower to be located on a tract of land now owned by Rayner and Bonnie Chavez. They own a five-acre tract and propose to split their tract into a 4-1/2 acre tract and a 1/2-acre tract. The tower will be located on the 1/2-acre tract. The lot split is to be accomplished through the Summary Review process. Staff members have reviewed the land division plat and have no problems with it. The proposed use requires no water or sewer hook-ups and will not increase traffic. The tower site was previously cleared for placement of a doublewide home, so the proposed use will not change storm water runoff. The tower is to be a 180 feet tall self-supported girder structure with an auxiliary utility building. It is to be one of three planned towers. The other two are to be located in Camelot and by the Swiss Chalet. There are to be no lights on top. There were no written protests submitted, nor any verbal protests at the hearing. The Commission voted to recommend approval of the conditional use.

Mayor Miller said I would like to entertain approval because being in the mountains communication is restricted anyway. We do need communication in case of an emergency.

Councilor Miller moved to approve P&Z recommendation to approve the Conditional Use requested by Plateau Telecommunications, Inc. for cellular service. Seconded by Councilor Olivo.

Councilor Garrett asked will it affect any other types of electronic systems in the area. Emmet Sparks said I am with Plateau Telecommunications. This will not affect anything else. It is a different frequency. This entire set up will not have a generator system. Places we do have generator systems come on about once a week automatically. This one doesn't have one because it would be too noisy but it does have a battery backup that will last for three days. Councilor Garrett asked you don't foresee any adverse reaction to the residence in the area and Mr. Sparks answered no. Councilor Garrett said I notice you said that you don't think it will affect the drainage to the people below. Mr. Armstrong said we looked at the drainage and that property slopes to the back. Councilor Garrett asked it doesn't open this piece of property up to be divided into other half-acre lots and Mr. Armstrong answered no. Mr. Sparks said I would like to add there will be a six-foot chain link fence put around the property. I am also going to have them put a gate across where we turn into from that road so nobody will have any business up there.

Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

#### PUBLIC INPUT

Jim Burrow said I just wanted to say Judy, the Lions Club will be there with the vision screening. We will be there from 3 p.m. to 7 p.m. and we are looking forward to it. That is one of the free deals we do for the community. Councilor Miller said thank you.

Bonnie Richardson said I am with the Parks & Rec Committee. I would like to recognize our new sign over at the park. We have seen Leonard and his help working hard. It has turned out beautifully and enhances the City.

Warren Beavers said I want to brag on Dan. The other day they paved the road I live on. It looked like a construction outfit but it wasn't, it was Public Works. Everybody was working. I just wanted to bring that to your attention. Also, one day I had a pack of dogs running wild and the lady responded immediately. This is a sign of growth and we are growing.

Emmet Sparks said I would like to comment on the paint they agreed on for the tower, evergreen. This paint will be put on by the factory and that is why we had to pick a color. There probably is a shortage of steel because of the hurricanes so it will probably take a while to get built but I want you to know that it is going to be done professionally.

Councilor Olivo said I think the Fire Department is planning to have a haunted house for the kids in October. Bill Dunlap said I am the Code Enforcement Officer for Ruidoso Downs and I am also a volunteer fireman. At our last meeting we decided to have a haunted house for the kids again this year. We will also have a cakewalk and some other games. We are going to have it on Monday night, October 31st. That is traditionally Halloween and everyone agreed with that too. I believe it is going to go about three hours or maybe a little longer from 6 p.m. to 9 p.m. I am working on getting the advertisement done right now. I have already talked with KRUI radio and I need to see the newspaper about it in the next day or two. Any council members that would be willing to help out would be great. We had a good time the last time I was involved in it and we are looking forward to doing it again this year.

Attorney Bryant asked Mr. Dunlap to tell us how things are progressing on Ms. Ryan's property. I have driven by a couple of times since the dumpster went in and I notice work going on but maybe you have even better information. Mr. Dunlap said the last I had heard and the last conversation I had with any of the individuals up there was they were cleaning out the interior of the house. I am not sure but I think this is the second dumpster that has been there. Yes, they have done quite a bit of work as far as getting rid of the items that need to be gone. I haven't actually been inside the house. The police department does do a close patrol of that residence. Several of the officers have stopped there and asked various individuals involved in it. Mr. Eisler has evidently tried very hard to uphold his end of our deal. It looks pretty good so far. I haven't talked with Steve personally in the last few days but I will get with him this week.

Councilor Garrett said I can't be here on the 31st but when are you going to actually construct it? Mr. Dunlap said I have probably ten firemen that are going to help. Councilor Garrett said let me know if I can do anything to help.

Mr. Gens said John and I were talking today about some people not being hooked up to sewer. I spoke with Bill. If we go out and notice people not connected and Bill gives them a notice and time line, what is our next step if they don't comply. Attorney Bryant said it would be a citation in the municipal court. Councilor Miller said if the sewer is not real accessible to them, is there any help these people can get to get it accessible like people on low income? Administrator Waters said we don't have any funds available for that within the City. There are some institutions like the Community Action Corporation that do occasionally help folks like that and I will bring it before the Board at our next meeting. We have to access how many are out there. The requirement currently is if you are within 200 feet of the sewer main, you are required to hook up. Some of these folks are within five, ten, fifteen feet of the sewer line. There are some that should have hooked up on Colorado that didn't hook up. Councilor Miller said it can be a large cost and a lot of people can't afford to do that and Administrator Waters said it can be. Councilor Garrett said a lot of people on Colorado didn't have the money to do it when they did it. People get really upset because we aren't enforcing that issue. I understand how they feel. They feel like they didn't have

the money yet they found a way to do it and think it is unfair of us not to have the other people hook up.

Attorney Bryant said we have an anti-donation clause problem with the City just paying. You can, however, create a fund in your budget - you could do it in your budget mid-year or you could do it in your budget cycle next spring and use that money to hook people up and then set them up on a payment schedule to pay the money back. You are not making a gift to them but you are spreading it over time according to their ability to pay. I would say something within a year to give them time to pay it. Something like \$5 a month on a \$300 bill would not be appropriate. We can design that kind of program and set a little fund aside and then use that money to help people every year because you are protecting health, safety and welfare by shutting off septic tanks and putting them on the sewer system. With that kind of a program you are not violating the anti-donation clause but you have the Bateman Act that says these things have to be handled within a year. If someone has a \$6,000 project to get hooked up then that type of program is not going to help them out very much. Councilor Miller said then the City would do the work. Attorney Bryant said the City would either do the work or we would contract it out. We try not to get into that business because then the public entities are competing against local plumbers and we really don't want to be doing that. Administrator Waters said and the damage to private property is a liability as well. The other issue that the Council needs to consider if and when this item does come up, we have incredibly large uncollectibles. You were told before of the people defaulting on their bills. You need to understand if you do this, this is something you may not get paid back for and I don't know if that is going to be a violation of the anti-donation clause or not. We have a lot of people that aren't paying their bills and that needs to be addressed. You know we had a very large group of folks in the last go around we had to eat so it does become a budgetary item. If we have a large group like the Agua Fria folks you may get up to \$70,000 in cost to hook these people up and I, as a manager, would advise against that. That is just too much liability to possibly incur that you won't get back. We would probably have to come up with some type of financial guarantee that these folks are going to pay for this. Depending upon a lien on their property or shutting their water off could create more problems for that family than simply finding a private source to pay for it. There are some of those out there. I know the Community Action program has done that in other towns so that is certainly an avenue I would like to try first prior to creating a budget because I see problems in that for the finance department. We do have an incredible problem with people not paying their bills. We have to address that soon. That will be addressed when we finally get the ordinance together to correct some of the problems that are in our ordinance. We do have some mechanisms in there that are probably unfair like 10 percent per month and builds up on an accumulative basis. That needs to be corrected obviously. But, remember there was a reason it was put in place because even back then they had a serious problem of people not paying their bills. We are going to have to figure out a way to encourage folks to pay their obligations to the City.

EXECUTIVE SESSION

Mayor Miller entertained a motion to go into Executive Session, discussion of all threatening and/or pending litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7.

Motion was made by Councilor Morales to go into Executive Session, for discussion of all threatening and/or pending litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H) 7. Seconded by Councilor Garrett. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 6:25 p.m., invited City Attorney Bryant, City Administrator Waters and City Clerk Virden to attend the Executive Session and called for a five-minute recess to clear the Council chambers.

Motion was made by Councilor Garrett to go back into open session. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller called the regular meeting back in session at 7:29 p.m.

Councilor Morales attested that the only item discussed in Executive Session was Threatening or Pending Litigation pursuant to Section 10-15-1(H)7 and no action was taken.

Councilor Morales moved to accept the JUAB settlement in the amount of \$80,000 with Rule 41, dismissal of the lawsuit and that we exchange all necessary releases. Seconded by Councilor Miller. Roll call votes: Councilor Olivo, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Morales and seconded by Councilor Miller to adjourn at 7:30 p.m. Motion passed unanimously.

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Bob A. Miller, Mayor

ATTEST:

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Carol Virden, City Clerk/Treasurer