

Assembly Bill No. 97–Assemblywoman Smith

CHAPTER.....

AN ACT relating to the City of Sparks; amending the Charter of the City of Sparks to revise the process for appointing various positions in city government; revising the selection process for Mayor pro tempore; revising the list of classes of persons protected from employment discrimination by the City; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 2 of this bill authorizes the City Manager of the City of Sparks to appoint the heads of each department and various executive, administrative and professional employees without confirmation by the City Council. **Sections 4 and 7** of this bill add to and make consistent the classes of persons protected from employment discrimination.

Under the existing Charter of the City of Sparks, the City Council elects the Mayor pro tempore from its members. (Sparks City Charter § 3.010) **Section 5** of this bill requires the Mayor to nominate a member of the City Council to be Mayor pro tempore subject to the approval of the majority of the City Council. **Sections 1 and 5** also clarify that if the office of Mayor is vacant, the Mayor pro tempore shall act as Mayor until the next general election.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1.070 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as last amended by chapter 41, Statutes of Nevada 2001, at page 395, is hereby amended to read as follows:

Sec. 1.070 Elective offices; vacancies. Except as otherwise provided in NRS 268.325:

1. A vacancy in the City Council ~~or~~ or in the office of City Attorney or Municipal Judge must be filled by appointment of the Mayor, subject to confirmation by the City Council, within 30 days after the occurrence of the vacancy. A person may be selected to fill a prospective vacancy in the City Council before the vacancy occurs. In such a case, each member of the Council, except any member whose term of office expires before the occurrence of the vacancy, may participate in any action taken by the Council pursuant to this section. If the majority of the Council is unable or refuses for any reason to confirm any appointment made by the Mayor within 30 days after the vacancy occurs,



the City Council shall present to the Mayor the names of two qualified persons to fill the vacancy. The Mayor shall, within 15 days after the presentation, select one of the two qualified persons to fill the vacancy. The appointee must have the same qualifications required of the elected official.

2. A vacancy in the office of the Mayor must be filled by the Mayor pro tempore. The resulting vacancy in the City Council must be filled as provided in subsection 1.

3. The appointee or Mayor pro tempore, in *the* case of a vacancy in the office of Mayor, shall serve until his successor is elected and qualified at the next *general* election to serve the remainder of the unexpired term.

Sec. 2. Section 1.080 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as last amended by chapter 129, Statutes of Nevada 1993, at page 229, is hereby amended to read as follows:

Sec. 1.080 Appointive positions.

1. The Mayor of the City shall appoint a City Manager, subject to confirmation by the City Council.

2. ~~[Subject to confirmation by the City Council,]~~ *Except as otherwise provided in this Charter,* the City Manager shall appoint ~~[-~~

~~(a) The] the heads of [the Fire and Police departments and one technical assistant in each of those departments. A technical assistant may not supervise any other employees.~~

~~(b) Any] each department.~~

3. *Except as otherwise provided in this Charter, the City Manager or the designee of the City Manager may appoint any* employee employed in a bona fide executive, administrative or professional capacity. As used in this ~~[paragraph:~~

~~(1)] subsection:~~

(a) "Employee employed in a bona fide executive capacity" has the meaning ascribed to it in 29 C.F.R. § ~~[541.1, as that section existed on October 1, 1993.~~

~~(2)] 541.100.~~

(b) "Employee employed in a bona fide administrative capacity" has the meaning ascribed to it in 29 C.F.R. § ~~[541.2, as that section existed on October 1, 1993.~~

~~(3)] 541.200.~~

(c) "Employee employed in a bona fide professional capacity" has the meaning ascribed to it in 29 C.F.R. § ~~[541.3, as that section existed on October 1, 1993.~~



~~—3.]~~ **541.300.**

4. The City ~~[Council]~~ **Manager** shall create and revise as necessary a document which:

- (a) Describes the organization of all departments, divisions and offices of the City; and
- (b) Sets forth all appointive positions of the City.

Sec. 3. Section 1.100 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as amended by chapter 450, Statutes of Nevada 1985, at page 1310, is hereby amended to read as follows:

Sec. 1.100 Mayor and Councilmen not to hold other office.

1. The Mayor and a member of the Council may not:

(a) Hold any other elective office with the State of Nevada, Washoe County, the City of Sparks or any other city, except as provided by law.

(b) ~~[Be]~~ **Except as otherwise provided in subsection 3 of section 3.010, be** appointed to any position created by , or the compensation for which was increased or fixed by , the City Council until 1 year after the expiration of the term for which such person was elected.

2. Any person holding any office proscribed by subsection 1 automatically forfeits his office as Mayor or member of the Council.

Sec. 4. Section 1.130 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as last amended by chapter 457, Statutes of Nevada 1979, at page 852, is hereby amended to read as follows:

Sec. 1.130 Certain activities prohibited.

1. A person shall not be appointed to or removed from, or in any way favored or discriminated against with respect to , any City position or appointive City administrative office because of race, sex, ~~[religious creed,]~~ **sexual orientation, religion,** color, **age, disability, marital status or** national origin, ~~[ancestry or political affiliations.]~~ **or because of political or personal reasons or affiliations, except when based upon a bona fide occupational qualification.**

2. A person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall not directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.



3. A person shall not orally, in writing or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any elected officer of the City or candidate for any City office from any person holding any compensated appointive City position.

4. A person who holds any compensated appointive City position shall not make, solicit or receive any contribution of campaign funds for any elected officer of the City or candidate for any City office or take any part in the management, affairs or political campaign of the candidate.

5. Any person who by himself or with others willfully violates any of the provisions of subsections 1 ~~to 3, inclusive,~~, 2 or 3 is subject to the jurisdiction of the Justice Court of the Township of Sparks and is guilty of a misdemeanor, punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

6. Any person who violates any of the provisions of this section shall be ineligible to hold any City office or position for a period of 5 years and, if he is an officer or employee of the City, shall immediately forfeit his office or position.

Sec. 5. Section 3.010 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as last amended by chapter 107, Statutes of Nevada 2003, at page 603, is hereby amended to read as follows:

Sec. 3.010 Mayor: Duties; Mayor pro tempore.

1. The Mayor shall:

(a) Preside over the meetings of the City Council, but is not entitled to vote on any procedural, substantive or other matter.

(b) Act as the head of the government of the City for all purposes.

(c) Perform such emergency duties as may be necessary for the general health, welfare and safety of the City.

(d) Perform such other duties as may be prescribed by ordinance or by the provisions of Nevada Revised Statutes which apply to a mayor.

2. The Mayor may veto all matters passed by the City Council if he gives notice in writing to the City Clerk within 10 days of the action taken by the City Council. A veto may be overturned only by a vote of at least four-fifths of the City Council. An action requiring the expenditure of money is not effective without the approval of the Mayor, unless he does not disapprove the action within 10 days after it is taken by



the City Council, or the City Council by a four-fifths majority approves such expenditure at a regular meeting.

3. The ~~[City Council shall elect one of its members]~~ *Mayor shall nominate a member of the City Council* to be Mayor pro tempore. *The nominee must be approved by a majority of the total number of members of the City Council. If so approved, the nominee shall be Mayor pro tempore.* He shall:

(a) Hold the office and title until the next *general* election without additional compensation, except as otherwise provided in paragraph (c).

(b) Perform the duties of Mayor during the temporary absence or disability of the Mayor without loss of his rights and powers as a member of the Council.

(c) Act as Mayor until the next *general* election if the office of Mayor becomes vacant and draw the salary of Mayor. His salary and position as a member of the Council cease.

Sec. 6. Section 3.020 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as last amended by chapter 450, Statutes of Nevada 1985, at page 1315, is hereby amended to read as follows:

Sec. 3.020 City Manager: Duties; residence.

1. The City Manager is responsible to the Council for the efficient administration of all the affairs of the City. He shall:

(a) Exercise a careful supervision of the City's general affairs.

(b) Enforce all laws and all acts of the Council which are subject to enforcement by him or by persons under his supervision.

(c) Exercise control over all departments of the City government and its officers and employees . ~~[, except any department whose chief executive officer is not appointed by the City Manager.]~~

(d) Attend all meetings of the Council and its committees, except when the Council is considering his removal, with the right to take part in discussions, but without power to vote.

(e) Recommend to the Council the adoption of such measures and bills as he considers necessary or expedient.

(f) Make investigations into:

(1) The affairs of the City;

(2) Any department or division of the City;



- (3) Any contract; or
- (4) The proper performance of any obligation owed to the City.
- (g) Prepare and submit to the Council the annual budget.
- (h) Keep the Council fully informed as to the financial condition and needs of the City.
- (i) Submit to the Council, at least once each month, a summary of all claims and bills approved for payment by him.
- (j) Not engage in any other business or occupation without the approval of the City Council.
- (k) Perform such other duties as prescribed by this Charter or be required by ordinance or resolution of the Council.

2. The City Manager must establish his residence within the City within 90 days after his appointment, unless the period is extended by the Council. He must reside in the City during his term of office.

Sec. 7. Section 9.080 of the Charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, as last amended by chapter 350, Statutes of Nevada 1987, at page 793, is hereby amended to read as follows:

Sec. 9.080 Prohibited acts. An employee of the City who has authority to recommend, effectuate or approve the hiring, removal, promotion or discipline of another employee of the City shall not:

1. Discriminate for or against an employee or applicant for employment on the basis of race, color, national origin, religion, age, sex, marital status, ~~political affiliation or physical, aural or visual handicap,~~ *sexual orientation or disability, or because of political or personal reasons or affiliations*, except when based upon a bona fide occupational qualification;

2. Solicit or consider a written or oral recommendation or statement concerning a person under consideration for hiring, removal, promotion or discipline, except for:

(a) A record of employment of the person maintained by an employer in the regular course of business; or

(b) An evaluation of the person's character, loyalty, ability, aptitude, suitability, qualifications or history of performance, if within the personal knowledge of the person furnishing the evaluation and if relevant to the position for which the person is under consideration;



3. Coerce an employee to engage in a political activity or to provide, or retaliate against an employee for refusing to provide, a political contribution or service;

4. Deceive or willfully obstruct a person regarding his right to seek a position of employment;

5. Influence a person to withdraw from seeking a position of employment to assist or obstruct another person who seeks such a position;

6. Except as specifically authorized by an ordinance, administrative rule or regulation, or state or federal law, grant a preference or advantage to an employee or applicant for employment, including defining the scope or manner of competition or the requirements for a position of employment, to assist or obstruct any person who seeks such a position;

7. Retaliate against an employee or applicant for employment for disclosing information he reasonably believes to evidence:

(a) A violation of an ordinance, administrative rule or regulation, or state or federal law; or

(b) A mismanagement or gross waste of money, an abuse of authority, or a situation that presents a substantial and specific danger to the public health or safety, unless the disclosure is:

(1) Specifically prohibited by a contract to which the City is a party and not required by an ordinance, administrative rule or regulation, or state or federal law; or

(2) Prohibited by an ordinance, administrative rule or regulation, or state or federal law; or

8. Retaliate against an employee or applicant for employment for exercising a right of appeal provided by an ordinance, administrative rule or regulation, or state or federal law.

Sec. 8. This act becomes effective on July 1, 2011.

