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ASSEMBLY BILL NO. 97—ASSEMBLYWOMAN SMITH

PREFILED JANUARY 25, 2011

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Referred to Committee on Government Affairs

SUMMARY—Revises the Charter of the City of Sparks to make various changes in provisions concerning city government. (BDR S-535)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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

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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:**

1 **Section 2** of this bill authorizes the City Manager of the City of Sparks to  
2 appoint the heads of each department and various executive, administrative and  
3 professional employees without confirmation by the City Council. **Sections 4 and 7**  
4 of this bill add to and make consistent the classes of persons protected from  
5 employment discrimination.  
6 Under the existing Charter of the City of Sparks, the City Council elects the  
7 Mayor pro tempore from its members. (Sparks City Charter § 3.010) **Section 5** of  
8 this bill requires the Mayor to nominate a member of the City Council to be Mayor  
9 pro tempore subject to the approval of the majority of the City Council. **Sections 1**  
10 **and 5** also clarify that if the office of Mayor is vacant, the Mayor pro tempore shall  
11 act as Mayor until the next general election.

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

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

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

7           1. A vacancy in the City Council ~~§~~ or in the office of  
8 City Attorney or Municipal Judge must be filled by  
9 appointment of the Mayor, subject to confirmation by the  
10 City Council, within 30 days after the occurrence of the  
11 vacancy. A person may be selected to fill a prospective  
12 vacancy in the City Council before the vacancy occurs. In  
13 such a case, each member of the Council, except any member  
14 whose term of office expires before the occurrence of the  
15 vacancy, may participate in any action taken by the Council  
16 pursuant to this section. If the majority of the Council is  
17 unable or refuses for any reason to confirm any appointment  
18 made by the Mayor within 30 days after the vacancy occurs,  
19 the City Council shall present to the Mayor the names of two  
20 qualified persons to fill the vacancy. The Mayor shall, within  
21 15 days after the presentation, select one of the two qualified  
22 persons to fill the vacancy. The appointee must have the same  
23 qualifications required of the elected official.

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

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

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

35           Sec. 1.080 Appointive positions.

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

38           2. ~~Subject to confirmation by the City Council,~~ *Except*  
39 *as otherwise provided in this Charter,* the City Manager shall  
40 appoint ~~§~~:



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

4 ~~—(b) Any] *each department.*~~

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

10 ~~—(1)] *subsection:*~~

11 (a) “Employee employed in a bona fide executive  
12 capacity” has the meaning ascribed to it in 29 C.F.R. §  
13 ~~[541.1, as that section existed on October 1, 1993.~~

14 ~~—(2)] *541.100.*~~

15 (b) “Employee employed in a bona fide administrative  
16 capacity” has the meaning ascribed to it in 29 C.F.R. §  
17 ~~[541.2, as that section existed on October 1, 1993.~~

18 ~~—(3)] *541.200.*~~

19 (c) “Employee employed in a bona fide professional  
20 capacity” has the meaning ascribed to it in 29 C.F.R. §  
21 ~~[541.3, as that section existed on October 1, 1993.~~

22 ~~—3.] *541.300.*~~

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

25 (a) Describes the organization of all departments,  
26 divisions and offices of the City; and

27 (b) Sets forth all appointive positions of the City.

28 **Sec. 3.** Section 1.100 of the Charter of the City of Sparks,  
29 being chapter 470, Statutes of Nevada 1975, as amended by chapter  
30 450, Statutes of Nevada 1985, at page 1310, is hereby amended to  
31 read as follows:

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

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

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

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

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



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

5           Sec. 1.130 Certain activities prohibited.

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

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

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

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

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

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

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

44           Sec. 3.010 Mayor: Duties; Mayor pro tempore.

45           1. The Mayor shall:



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

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

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

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

11 2. The Mayor may veto all matters passed by the City  
12 Council if he gives notice in writing to the City Clerk within  
13 10 days of the action taken by the City Council. A veto may  
14 be overturned only by a vote of at least four-fifths of the City  
15 Council. An action requiring the expenditure of money is not  
16 effective without the approval of the Mayor, unless he does  
17 not disapprove the action within 10 days after it is taken by  
18 the City Council, or the City Council by a four-fifths majority  
19 approves such expenditure at a regular meeting.

20 3. The ~~{City Council shall elect one of its members}~~  
21 *Mayor shall nominate a member of the City Council* to be  
22 Mayor pro tempore. *The nominee must be approved by a*  
23 *majority of the total number of members of the City*  
24 *Council. If so approved, the nominee shall be Mayor pro*  
25 *tempore.* He shall:

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

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

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

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

40 Sec. 3.020 City Manager: Duties; residence.

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

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



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

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

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

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

14 (f) Make investigations into:

15 (1) The affairs of the City;

16 (2) Any department or division of the City;

17 (3) Any contract; or

18 (4) The proper performance of any obligation owed to  
19 the City.

20 (g) Prepare and submit to the Council the annual budget.

21 (h) Keep the Council fully informed as to the financial  
22 condition and needs of the City.

23 (i) Submit to the Council, at least once each month, a  
24 summary of all claims and bills approved for payment by  
25 him.

26 (j) Not engage in any other business or occupation  
27 without the approval of the City Council.

28 (k) Perform such other duties as prescribed by this  
29 Charter or be required by ordinance or resolution of the  
30 Council.

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

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

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

43 1. Discriminate for or against an employee or applicant  
44 for employment on the basis of race, color, national origin,  
45 religion, age, sex, marital status, ~~political affiliation or~~



1 ~~physical, aural or visual handicap,]~~ *sexual orientation or*  
2 *disability, or because of political or personal reasons or*  
3 *affiliations,* except when based upon a bona fide occupational  
4 qualification;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

