Carson City
Agenda Report

Date Submitted: July 20, 2012 **Agenda Date Requested:** August 2, 2012
Time Requested: 5 minutes

To: Mayor and Board of Supervisors

From: Randal Munn, Chief Deputy District Attorney

Subject Title: For Possible Action: to adopt Bill No. 108, on second reading, Ordinance No. _____, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 2 - ADMINISTRATION AND PERSONNEL, CREATING A NEW CHAPTER 2.44 – FINANCIAL ADMINISTRATION, AND CREATING A NEW SECTION 2.44.010 – MAJORITY VOTING REQUIRED ON USE OF PUBLIC FUNDING FOR CARSON CITY CENTER PROJECT, TO REQUIRE AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE PEOPLE BEFORE PUBLIC FUNDING CAN BE USED FOR THE CARSON CITY CENTER PROJECT, AND OTHER MATTERS PROPERLY RELATED THERETO. (*Randal Munn*)

Staff Summary: Pursuant to NRS 295.095 Petitioners filed their Affidavit For Petitioners' Committee and sample Initiative Petition ordinance at the Clerk-Recorder's office on February 1, 2012. The Initiative Petition ordinance, as signed by various Carson City voters, was submitted on June 27, 2012, for "Certification of Sufficiency" pursuant to NRS 295.105. On July 6, 2012, the Certification of Sufficiency that the petition contained sufficient signatures to qualify for consideration was issued by the Clerk-Recorder. The 30-day time limit ("within 30 days after the date the petition was finally determined sufficient" NRS 295.115(1)) for the Carson City Board of Supervisors to adopt the certified initiative ordinance expires on Sunday August 5, 2012. The initiative ordinance adopted by the Board, if any, must be "without any change in substance" from that of the circulated petition's. If the Board adopts the initiative ordinance on first reading at its July 19, 2012 meeting, a second reading adoption at its August 2, 2012 meeting would satisfy both the Carson City Charter and NRS 295.115(1). If the Board rejects adoption, then the Board must submit the Initiative Petition ordinance to the voters as a ballot question at the November 6, 2012 general election or otherwise sue to keep it off the ballot. Arguments for and against would be developed by appointed committees pursuant to NRS 295.121.

Type of Action Requested:

( ) Resolution (X) Ordinance- Second Reading
( ) Formal Action/Motion ( ) Other (Specify)

Does This Action Require A Business Impact Statement: ( ) Yes (X) No

Recommended Board Action: I move to adopt Bill No. 108, on second reading, Ordinance No. _____ AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 2 - ADMINISTRATION AND PERSONNEL, CREATING A NEW CHAPTER 2.44 – FINANCIAL ADMINISTRATION, AND CREATING A NEW SECTION 2.44.010 – MAJORITY VOTING REQUIRED ON USE OF PUBLIC FUNDING FOR CARSON CITY CENTER PROJECT, TO REQUIRE AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE PEOPLE BEFORE PUBLIC FUNDING CAN BE USED FOR

THE CARSON CITY CENTER PROJECT, AND OTHER MATTERS PROPERLY RELATED THERETO.

Explanation for Recommended Board Action: The circulated and certified Initiative Petition, which proposes a new ordinance for Carson City, states:

> "The people of Carson City, Nevada do enact as follows: 'No public funding shall be used for the proposed Carson City Center Project (commonly known as the Nugget Economic Development Project or the Nugget Project) without a majority vote of the people approving such public funding.'
>
> Effect: The general election ballot for 2012 would have a provision to vote that no public funding shall be used for the proposed Carson City Center (commonly known as the Nugget Economic Development Project or the Nugget Project) without a majority vote of the people approving such public funding.
> **County of Carson City (ONLY REGISTERED VOTERS OF THIS COUNTY MAY SIGN BELOW."**

The District Attorney's Office believes this Initiative Petition language can be successfully challenged in court as exceeding the authority of the people under Nevada Supreme Court precedent regarding an initiative ordinance that contradicts the authority of the Board of Supervisors granted by the Carson City Charter and the Nevada Revised Statutes.

Nevertheless, this Board is within its authority to choose to comply with the initiative ordinance regardless of its potential legal infirmities and adopt it rather than challenge it in court. However, there is no Nevada Supreme Court case similar to this unique circumstance. The Board has previously expressed its intent to voluntarily comply with the initiative petition ordinance by adopting its own ballot question (pursuant to its Resolution 2012-R15) for the November 6, 2012 election.

Upon any decision of this Board to adopt the initiative ordinance rather than authorize a lawsuit, the District Attorney's Office advises this Board (and any future Board) that it may also choose at a future date to ignore it as voidable, or repeal the adopted initiative ordinance which would be the Board's right under NRS 295.125 even if it was adopted by the vote of the people.

If the Board decides not to adopt, the Nevada Supreme Court requires that the Board to cause the initiative ordinance be placed upon the November 6, 2012 general election ballot or otherwise bring a lawsuit to prevent its placement on the ballot. Las Vegas Taxpayers Accountability v. City Council of Las Vegas, 125 Nev. ___, 208 P.3d 429 (2009).

Applicable Statute, Code, Policy, Rule or Regulation: Nevada Revised Statutes 295.105, NRS 295.115 and NRS 295.121.

Fiscal Impact: On June 21, 2012, the Carson City Board of Supervisors adopted a Resolution 2012-R15, placing its own ballot question on the November 6, 2012 general election ballot to provide for voter approval of up to ¼ of 1 percent sales tax for bond

financing of the proposed City Center Project. Therefore, any decision on this agenda item does not separately have a fiscal impact.

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: 1) Do not adopt the ordinance (rejection of initiative ordinance) and instruct the District Attorney's office to return at the next meeting with an agenda item to authorize a lawsuit to keep the initiative petition ordinance off the ballot.

2) Do not adopt the ordinance (rejection of the initiative ordinance) and instruct it to be placed on the ballot as required by law.

Supporting Material: Ordinance

Prepared By: Randal Munn, Chief Deputy District Attorney, Civil Division

Reviewed By: _____ Date: 7-24-12
(Public Works)

_____ Date: 7-24-12
(City Manager)

_____ Date: 7/24/12
(District Attorney)

_____ Date: 7/24/12
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

_____
(Vote Recorded By)

ORDINANCE NO. _____

BILL NO. 108

AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 2 - ADMINISTRATION AND PERSONNEL, CREATING A NEW CHAPTER 2.44 – FINANCIAL ADMINISTRATION, AND CREATING A NEW SECTION 2.44.010 – MAJORITY VOTING REQUIRED ON USE OF PUBLIC FUNDING FOR CARSON CITY CENTER PROJECT, TO REQUIRE AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE PEOPLE BEFORE PUBLIC FUNDING CAN BE USED FOR THE CARSON CITY CENTER PROJECT, AND OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF SUPERVISORS OF CARSON CITY DO ORDAIN:

Section I: Title 2, ADMINISTRATION AND PERSONNEL, of the Carson City Municipal Code is hereby amended by creating a new Chapter 2.44 – FINANCIAL ADMINISTRATION, by creating a new Section 2.44.010 – Majority voting required on use of public funding for Carson City Center Project, as follows:

Chapter 2.44 – FINANCIAL ADMINISTRATION

2.44.010 – Majority voting required on use of public funding for Carson City Center Project.

No public funding shall be used for the proposed Carson City Center Project (commonly known as the Nugget Economic Development Project or the Nugget Project) without a majority vote of the people approving such public funding.

Section II: That no other provisions of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____ (month) _____ (day), 2012.

PROPOSED by _____.

PASSED _____ (month) _____ (day), 2012.

VOTE: AYES: SUPERVISORS: _____

_____

NAYS: SUPERVISORS: _____

ABSENT: SUPERVISORS: _____

_____
Robert Crowell, Mayor

ATTEST:

_____
ALAN GLOVER
CLERK/RECORDER.

This ordinance shall be in force and effect from and after the __ day of the month of _____ of the year, 2012.