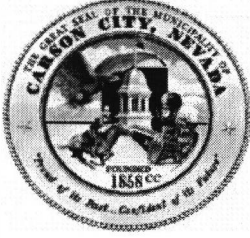


# **APPENDIX A**



# CARSON CITY

## ORDINANCE DRAFT REQUEST (ODR)

Date of submission:

Name, Department of Person Submitting:

Department head:

This is a request to (check all that apply):  repeal an existing ordinance;  amend an existing ordinance;  adopt a new ordinance

Title and Chapter of Carson City Municipal Code affected:

Description of subject and purpose of ODR (attach additional pages if necessary):

<b>Contact</b>	Contact's Name:	Contact's Department:
	Contact's E-mail:	Contact's Phone Number:
<b>Delivery</b>	Delivery of draft requested on or before: Insert date: _____; OR <input type="checkbox"/> Check this box if ODR is not time sensitive.	City Manager approval required for delivery requests less than 45 days after submission: Approved by: _____ (initials) on: _____ (date) ( <i>if applicable</i> )
	<b>Add'l Info</b> PLEASE ATTACH ADDITIONAL MATERIAL AND INFORMATION THAT MAY ASSIST UNDERSTANDING ODR, SUCH AS: <ul style="list-style-type: none"> <li>• Sample ordinances, regulations, or statutes from other jurisdictions;</li> <li>• Source material such as media, academic, or governmental publications;</li> <li>• Applicable laws, regulations, or judicial decisions that bear upon the draft;</li> <li>• Correspondence</li> </ul> OPTIONAL: You may submit your own draft language.	
<b>Special</b>	Please explain any special requests or circumstances (attach additional pages if necessary):	

### OFFICE USE ONLY

OFFICE USE ONLY	ASSIGNMENT	TRACKING	
	Assigned to:	<b>ODR Received</b>	Date:
			By:
	Date of Assignment:	<b>ODR Reviewed</b>	Date:
		<b>Draft Delivered</b>	Date:

# **APPENDIX B**

Summary: Makes various changes to provisions relating to the organization of the Carson City Planning Commission.

BILL NO. \_\_\_\_

ORDINANCE No. 2017 - \_\_

AN ORDINANCE RELATING TO ZONING; AMENDING TITLE 18 (ZONING) OF THE CARSON CITY MUNICIPAL CODE, CHAPTER 18.02 (ADMINISTRATIVE PROVISIONS) TO REPEAL AND REPLACE SECTION 18.02.010 (PLANNING COMMISSION) TO AMEND THE PROCESS OF APPOINTING MEMBERS TO THE CARSON CITY PLANNING COMMISSION; MAKING VARIOUS CONFORMING CHANGES; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

The Board of Supervisors of Carson City do ordain:

SECTION I:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS) is hereby amended (**bold, underlined** text is added, [~~striken~~] text is deleted) by adding thereto a new section as follows:

**CCMC 18.02.009 – Planning Commission: Creation; duties; appointment, terms and removal of members; compensation.**

- 1. There is hereby created in Carson City the Carson City Planning Commission pursuant to NRS 278.030.**
- 2. In accordance with NRS 278.010 to 278.630, inclusive, and the provisions of this title, the Commission shall perform all duties that are required and may exercise all powers which have been granted.**
- 3. The Commission must be composed of 7 members, appointed by the Mayor from Carson City at large with the approval of the Board as required by NRS 278.030 and in accordance with the *Policies and Procedures of the Carson City, Nevada Boards, Committees, and Commissions* adopted by the Board, as may be amended.**
- 4. The term of each member is 4 years, or until his or successor takes office. A vacancy on the Commission that occurs other than through the expiration of a member's term must be filled for the unexpired term in the same manner provided in subsection 3.**
- 5. A member appointed to the Commission pursuant to this section must continuously reside and be registered to vote in Carson City throughout his or her term in office.**
- 6. The members of the Commission shall elect a Chair and Vice Chair by majority vote each year. Pursuant to NRS 278.060 and subject to any additional limitations**

set forth in the *Policies and Procedures of the Carson City, Nevada Boards, Committees, and Commissions* adopted by the Board, as may be amended, each term of Chair and Vice Chair is 1 year, with eligibility for reelection.

7. A member of the Commission may be removed, after a public hearing, by a majority vote of the Board for just cause, including, without limitation, for any of the following conduct:

(a) Inefficiency;

(b) Neglect of duty;

(c) Malfeasance; or

(d) Violation of any provision set forth in the *Policies and Procedures of the Carson City, Nevada Boards, Committees, and Commissions* adopted by the Board, as may be amended.

8. The members of the Commission shall serve without compensation.

## SECTION II:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS) is hereby amended (**bold, underlined** text is added, ~~{stricken}~~ text is deleted) by adding thereto a new section as follows:

### CCMC 18.02.011 – Meetings; records.

The Commission shall:

1. Hold at least one regular meeting in each month;

2. Adopt bylaws and rules for the transaction of business; and

3. Keep a complete record of its resolutions, transactions, findings and determinations, all of which constitute a public record and must be maintained at the Department.

## SECTION III:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS) is hereby amended (**bold, underlined** text is added, ~~{stricken}~~ text is deleted) by adding thereto a new section as follows:

### CCMC 18.02.012 – Commission actions; appeal to Board; attendance of Director.

1. On any matter properly before the Commission and on which the Commission has:

(a) Taken final action, the action may be appealed to the Board by the proponent of the action, a party aggrieved by the action and any member of the Board pursuant to CCMC 18.02.060.

(b) Made a recommendation for action to the Board, the approval or denial of the matter by majority vote of the Board shall be deemed to be the final action, unless the matter is remanded to the Commission by the Board for further consideration.

2. The Director or his or her designee shall attend each meeting of the Commission.

SECTION IV:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS), Section 18.02.010 (PLANNING COMMISSION) is hereby repealed.

**CCMC 18.02.010 [–Planning Commission.] Reserved.**  
**(Editor’s note: Ord. No. 2017- , § IV, adopted , 2017, repealed CCMC 18.02.010 – Planning Commission)**

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TEXT OF REPEALED SECTIONS

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**~~18.02.010 – Planning commission.~~**

- ~~1. — Purpose. The purpose of this ordinance is to specify the establishment and authority of the Carson City Planning Commission (hereinafter in Title 18 referred to as "commission".~~
- ~~2. — Authority; powers; duties; review by the board.~~
  - ~~a. — The commission is hereby created, pursuant to NRS 278.030.~~
  - ~~b. — The commission shall perform all duties and functions delegated to a County Planning Commission by the terms of NRS 278.010 to 278.630, inclusive, and CCMC Title 2 (Planning Commission).~~
  - ~~c. — The commission shall take action to approve, conditionally approve or deny special use permits, variances, and appeals of administrative decisions. The commission shall hear applications and recommend to the board action on changes to the Master Plan, zoning districts, amendments to Title 18 ordinances, amendments to the Development Standards, and all other appropriate subjects.~~
  - ~~d. — On matters where the commission takes final action, the proponent, any aggrieved party, or member of the board may appeal the decision to the board.~~
  - ~~e. — On matters where the commission makes a recommendation to the board, the board by majority vote may affirm, deny, or return to the recommendation to the commission for further consideration of any proposed recommendations.~~
- ~~3. — Membership; terms of office; vacancies; removal; attendance by director.~~
  - ~~a. — There shall be seven (7) members of the commission.~~

- b. ~~The terms of the members shall be four (4) years or until a successor takes office and all terms shall expire on June 30th of their respective years.~~
- e. ~~Vacancies occurring before the expiration of a commissioner's term shall be filled for the remaining unexpired portion of the term.~~
- d. ~~Members may be removed, after a public hearing, by a majority vote of the board for inefficiency, neglect of duty, or malfeasance of office.~~
- e. ~~The Planning and Community Development Director (hereinafter in Title 18 referred to as director) or his designee shall be in attendance at all commission meetings.~~

4. ~~Qualifications.~~

- a. ~~The mayor shall appoint, with the approval of the board, the members of the commission.~~
- b. ~~The members shall be residents of Carson City and registered voters therein at the time of their appointment and continuously throughout their term.~~

5. ~~Compensation. All members of the commission shall serve without compensation.~~

6. ~~Meetings and Records.~~

- a. ~~The commission shall hold at least one (1) regular meeting in each month.~~
- b. ~~The commission shall adopt by laws and rules for the transaction of their business and shall keep a record of its decisions and findings. This record shall be a public record.~~
- e. ~~Complete records of official actions of the commission shall be kept on file in the office of the planning and community development department.~~

7. ~~Chairman and Other Officers.~~

- a. ~~The commission shall elect yearly its chairman from among the appointed members.~~
- b. ~~The commission shall elect yearly other offices as it may determine necessary.~~

---

**END OF TEXT OF REPEALED SECTIONS**

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SECTION V:

That no other provisions of Title 18 of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on \_\_\_\_\_, 2018.

PROPOSED by \_\_\_\_\_.

PASSED on \_\_\_\_\_, 2018.

VOTE: AYES: SUPERVISORS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NAYS: SUPERVISORS: \_\_\_\_\_

\_\_\_\_\_

ABSENT: SUPERVISORS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Robert Crowell, Mayor

ATTEST:

\_\_\_\_\_  
Susan Merriwether  
Clerk-Recorder



# APPENDIX C

Summary: Amends the Carson City zoning map.

BILL NO. \_\_\_\_\_

ORDINANCE NO. 2018- \_\_\_\_

AN ORDINANCE RELATING TO ZONING; ESTABLISHING VARIOUS PROVISIONS TO CHANGE THE ZONING FROM AGRICULTURE TO SINGLE FAMILY 6,000 ON PROPERTY LOCATED AT THE EAST END OF RAILROAD DRIVE AND WEST OF INTERSTATE 580, ASSESSOR'S PARCEL NUMBER 010-051-44.

The Board of Supervisors of Carson City do ordain:

SECTION I:

An application for a zoning map amendment affecting Assessor's Parcel Number 010-051-44, property located at the east end of Railroad Drive and west of Interstate 580, Carson City, Nevada, was duly submitted by the Planning Division of the Carson City Community Development Department in accordance with CCMC 18.02.075 to revise the existing zoning designation of Assessor's Parcel Number 010-051-44 from Agriculture to Single Family 6,000. After proper noticing in accordance with chapter 278 of NRS and title 18 of CCMC, on May 30, 2018, the Carson City Planning Commission, during a public hearing, reviewed the staff report of the Planning Division, received public comment and voted 6 ayes and 1 nay to recommend to the Board of Supervisors approval of the application for the zoning map amendment.

SECTION II:

The zoning map of Carson City is hereby amended to change the zoning of Assessor's Parcel Number 010-051-44, approximately 26.89 acres in size, from Agriculture to Single Family 6,000 based on the following findings that the zoning map amendment:

1. Is in substantial compliance with the goals, policies and action programs of the Carson City master plan.
2. Will provide for land uses that are compatible with existing adjacent land uses.
3. Will not have a detrimental impact on other properties within the vicinity.
4. Will not negatively impact existing or planned public services or facilities.
5. Will not adversely impact the health, safety or welfare of the public.
6. Satisfies all other required findings of fact as set forth in subsection 5 of CCMC 18.02.075.

PROPOSED on \_\_\_\_\_, 2018.

PROPOSED by \_\_\_\_\_.

PASSED on \_\_\_\_\_, 2018.

VOTE: AYES: SUPERVISORS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAYS: SUPERVISORS: \_\_\_\_\_

ABSENT: SUPERVISORS: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Robert Crowell, Mayor

ATTEST:

\_\_\_\_\_  
Susan Merriwether  
Clerk-Recorder

# APPENDIX D



## BUSINESS IMPACT STATEMENT

This Business Impact Statement was prepared in accordance with the provisions of NRS (Nevada Revised Statutes) 237.030 to 237.150, inclusive, as a statutory prerequisite to the adoption of any rule\*\*\*, as that term is defined in NRS 237.060, by the Carson City Board of Supervisors.

\*\*\* A "rule" may include an ordinance, or an action taken by the Board, that imposes, increases or changes the basis for the calculation of a fee which is paid in whole or in substantial part by businesses. A "rule" **does not** include actions that impose, increase or change the basis for the calculation of: (1) special assessments imposed pursuant to NRS chapter 271; (2) impact fees imposed pursuant to NRS chapter 278B; (3) fees for remediation imposed pursuant to NRS chapter 540A; (4) taxes ad valorem; (5) sales and use taxes; or (6) a fee that has been negotiated pursuant to a contract between a business and Carson City. A "rule" also **does not** include: an action taken by the Board that approves, amends or augments the annual budget of Carson City; an ordinance adopted by the Board pursuant to a provision of NRS chapter 271, 271A, 278, 278A, 278B or 350; an ordinance adopted or action taken by the Board that authorizes or relates to the issuance of bonds or other evidence of debt of Carson City; or any rule for which Carson City does not have the authority to consider less stringent alternatives, including, for example, a rule that Carson City is required to adopt pursuant to a federal or state statute or regulation or to a contract into which Carson City has entered.

### ORDINANCE OR ACTION PROPOSED FOR ADOPTION

**[Insert title of ordinance or description of action proposed for adoption by the Board of Supervisors]**

1. *The manner in which notice was provided to the applicable trade associations and officers of businesses likely to be affected by the proposed ordinance or action, and a summary of any data, arguments or comments received from those recipients:*

a. Notice

**[If the question to be answered is inapplicable – indicate "N/A." here and under every other section below where appropriate.]**

**[List the dates and locations of any public events, meetings or hearings held to discuss adoption of the proposed ordinance or rule, the recipients to whom notices were sent and the dates of those mailings]**

b. Summary of comments

**[Provide a brief summary of received comments. If none, indicate that "No comments were received from any of the notice recipients."]**

2. *The estimated economic effect of the proposed ordinance or rule on businesses, including both adverse and beneficial effects, and both direct and indirect effects:*

a. *Adverse effects:*

**[Insert explanation here]**

c. *Beneficial effects:*

**[Insert explanation here]**

d. *Direct effects:*

**[Insert explanation here]**

e. *Indirect effects:*

**[Insert explanation here]**

3. *The methods considered by the Carson City Board of Supervisors to reduce the impact of the proposed ordinance or action on businesses and whether any of those methods were used:*

**[Insert explanation here]**

4. *Estimate of the annual cost to Carson City for enforcement of the proposed ordinance or action:*

**[Insert explanation here]**

5. *The total annual amount of money expected to be collected as a result of the new fee or increase in fee proposed by the ordinance or action, and the manner in which the money will be used:*

**[Insert explanation here]**

6. *The proposed ordinance or action [ ] DOES [ ] DOES NOT include any provisions which duplicate or are more stringent than Federal, State or local standards regulating the same activity.*

7. *The reasons for the conclusions regarding the impact of the proposed ordinance or action:*

**[Insert reasons here – summary of the foregoing is sufficient]**

8. *Based on the information considered, it has been determined that this proposed*

*ordinance or rule:*

DOES  DOES NOT impose a direct and significant economic burden upon a business.

DOES  DOES NOT directly restrict the formation, operation or expansion of a business.

**Pursuant to NRS 237.090(3), this Business Impact Statement was prepared and made available for public inspection by [Insert name of department/division that prepared this document] at the time the agenda notice on which the proposed ordinance or rule described in this statement is included was posted.**

**Pursuant to NRS 237.090(2), I, \_\_\_\_\_, the Carson City Manager, hereby certify that to the best of my knowledge and belief, the information contained herein was properly prepared and accurate.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**



## **OBJECTION PROCESS**

***Pursuant to Nevada Revised Statutes (NRS) 237.100, Carson City has adopted the following procedure by which a business may object to an ordinance or other action adopted by the Carson City Board of Supervisors:***

1. If a business believes it is aggrieved by a rule (as that term is defined in NRS 237.060) adopted by the Carson City Board of Supervisors, the business may object to all or part of the rule by completing and filing the attached petition form with the Carson City Clerk/Recorder at 201 North Carson Street, Ste. 1, Carson City, NV 89701.
2. Carson City will accept a petition for a period of thirty (30) days following adoption of the rule for either of the following reasons:
  - a. The Carson City Board of Supervisors or its designee failed to prepare a business impact statement as required by NRS Chapter 237; or
  - b. The business impact statement prepared by the Carson City Board of Supervisors or its designee is inaccurate, incomplete or did not consider or significantly underestimated the economic effect of the rule on businesses.
3. Upon receipt of a petition, the Carson City Clerk/Recorder will provide a copy of the petition to the Office of the District Attorney, the Department that assisted in preparing the rule and the Carson City Manager.
4. Appropriate Carson City personnel will consider the merits of the petition and forward a recommendation to the Carson City Board of Supervisors.
5. After receiving the recommendation concerning the merits of the petition, the Carson City Board of Supervisors will determine if the petition has merit and direct staff accordingly.

***A petition form is attached to this document. In accordance with NRS 237.100(4), a copy of this Objection Process has also been filed with the Carson City Clerk/Recorder and is available upon request to members of the public at no charge.***





## PETITION OBJECTING TO ADOPTION OF RULE

NRS 237.100 provides that a business which is aggrieved by the adoption of a rule, as that term is defined in NRS 237.060, by the governing body of a local government such as the Carson City Board of Supervisors, may object to all or a part of the rule by filing a petition. This form is provided to assist those who wish to file such a petition. This form must be filed with the Carson City Clerk/Recorder at **201 North Carson Street, Ste. 1, Carson City, Nevada 89701**, within 30 days after the date on which the rule was adopted. Please refer to the Objection Process document attached to this form for more information.

**Petitioner's name** (Include the name of the business or proposed business and the organizational structure; for example, a corporation, partnership, sole proprietorship, fictitious name, etc.): \_\_\_\_\_

**Petitioner's type of business:** \_\_\_\_\_

**Petitioner's business location:**

Street \_\_\_\_\_, City \_\_\_\_\_, County \_\_\_\_\_, State \_\_\_\_\_, Zip Code \_\_\_\_\_

**Petitioner's mailing address (If different business address):**

Street \_\_\_\_\_, City \_\_\_\_\_, County \_\_\_\_\_, State \_\_\_\_\_, Zip Code \_\_\_\_\_

**Petitioner's telephone number:** (     ) \_\_\_\_\_ - \_\_\_\_\_

**Petitioner is objecting to the following** (Identify the rule that is being objected to and indicate whether the rule is an ordinance, resolution, regulation or other instrument adopted by the Carson City Board of Supervisors or any other action taken by the Board. Provide the number of the rule, if known):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The basis of Petitioner's objection is as follows:**

- The governing body failed to prepare a business impact statement; or  
 The business impact statement is inaccurate, incomplete or did not consider or significantly underestimated the economic effect of the adopted rule on businesses.

**The nature of the impact of the above rule on Petitioner's business is as follows** (attach additional sheets if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**By signing below, you hereby represent that you are a duly authorized representative of the business identified above and that you have been authorized by that business to file this Petition on behalf of the business.**

\_\_\_\_\_  
**Name of Business**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name of Representative**

\_\_\_\_\_  
**Title of Representative**

# **APPENDIX E**

**JASON D. WOODBURY**  
*District Attorney*  
775.283.7677  
jwoodbury@carson.org



**OFFICE OF THE  
CARSON CITY DISTRICT ATTORNEY**  
885 East Musser Street, Suite 2030  
Carson City, NV 89701  
775.887.2070 • 775.887.2129 fax  
www.carson.org

August 16, 2019

**Via E-mail**

**SUPERVISOR JOHN BARRETTE**  
201 North Carson Street  
Suite 2  
Carson City, Nevada 89701  
[JBarrette@carson.org](mailto:JBarrette@carson.org)

Dear Supervisor Barrette:

NRS 252.160 requires a district attorney to provide legal opinions as requested by county officers in relation to the duties of their offices. You have asked this office to provide its opinion concerning the amendment process for a proposed ordinance under consideration by the Carson City Board of Supervisors ("Board"). Based on the analysis set forth below, it is the opinion of this office that the Board may amend a proposed ordinance at "first reading" so long as the amendment is within the scope of the applicable agenda item and at "second reading" so long as the amendment is within the scope of the agenda item and does not require modification of the published title or summary of the proposed ordinance.

Our analysis begins with a review of the nature and extent of the Board's legislative power and the provisions of the Carson City Charter and Nevada law establishing procedures for the introduction, amendment, and adoption of an ordinance. Next, we apply those relevant provisions of law to determine when the Board may amend an ordinance and what procedural limitations regulate the content of a proposed amendment.

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## I. BACKGROUND

### A. Legislative Authority of the Board

Carson City's legislative power is vested with the Board.<sup>1</sup> The Board's legislative power includes the authority to "make and pass" ordinances.<sup>2</sup> The scope of legislative power has been more particularly described as follows:

Briefly stated, legislative power is the power of law-making representative bodies to frame and enact laws, and to amend or repeal them. The power is indeed very broad, and, except where limited by Federal or State Constitutional provisions, that power is practically absolute. Unless there are specific constitutional limitations to the contrary, statutes are to be construed in favor of the legislative power.<sup>3</sup>

### B. Ordinance Preparation, Introduction, and Adoption Procedure

The process for the adoption of a new ordinance or the amendment of an existing ordinance<sup>4</sup> (hereinafter referred to as the "ordinance process") by the Board is established by Carson City Charter §§2.100 to 2.130, inclusive and NRS 244.095 to 244.115, inclusive.<sup>5</sup> Proposed ordinances must be presented as a bill,<sup>6</sup> which must include two prefatory components in addition to the proposed text of the ordinance. First, the bill must include a "summary ... which shall state in brief the subject matter of

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<sup>1</sup> See Carson City Charter §2.010(1).

<sup>2</sup> Carson City Charter §2.090(1).

<sup>3</sup> *Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (Nev. 1967) (holding delegation of non-judicial duties to judicial branch was unconstitutional) (citing *Mater of Platz*, 60 Nev. 296, 108 P.2d 858 (Nev. 1940); *Hard v. Depaoli*, 56 Nev. 19, 41 P.2d 1054 (Nev. 1935); *Moore v. Humboldt County*, 48 Nev. 397, 232 P.1078 (Nev. 1925); *State v. Lincoln County Power Dist.*, 60 Nev. 401, 111 P.2d 528 (Nev. 1941)); see *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 132 Nev. 784, 791, 383 P.3d 246, 251 (Nev. 2016) (holding constitutional amendment repealed contrary statute when amendment became effective).

<sup>4</sup> Procedural differences between adoption of a new ordinance and amendment of an existing ordinance are immaterial for purposes of the pending question. Therefore, to avoid inconsequential distraction, the analysis is expressed in the context of adoption of a new ordinance only. However, the analysis applies equally to amendment of an existing ordinance.

<sup>5</sup> Chapter 244 of Nevada Revised Statutes applies to Carson City. See NRS 0.033.

<sup>6</sup> See Carson City Charter §2.100(1); NRS 244.095(1).

the ordinance.”<sup>7</sup> Second, the bill must include a “title”<sup>8</sup> that “clearly”<sup>9</sup> and “briefly”<sup>10</sup> indicates the subject of the proposed ordinance.<sup>11</sup>

The bill is then “read to the Board by title.”<sup>12</sup> Colloquially, this proceeding is generally referred to as the “first reading.”

After first reading,

an adequate number of copies of the proposed ordinance must be filed with the Clerk for public distribution... [N]otice of the filing must be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in Carson City at least 10 days before the adoption of the ordinance.<sup>13</sup>

The published notice must include the bill’s title and an “adequate summary of the ordinance.”<sup>14</sup>

Following first reading and publishing, the ordinance returns for a public hearing at a Board meeting.<sup>15</sup> At that second meeting,

The ordinance must be read as first introduced, or as amended, and thereupon the proposed ordinance must be finally voted upon or action thereon postponed.<sup>16</sup>

Colloquially, this proceeding is generally referred to as the “second reading.”

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<sup>7</sup> NRS 244.095(2)(b).

<sup>8</sup> Carson City Charter §2.100(2); NRS 244.095(2)(a).

<sup>9</sup> NRS 244.095(2)(b).

<sup>10</sup> Carson City Charter §2.100(2).

<sup>11</sup> See Carson City Charter §2.100(2); NRS 244.095(2)(a).

<sup>12</sup> Carson City Charter §2.110(1); see NRS 244.100(1).

<sup>13</sup> Carson City Charter §2.110(1); see also NRS 244.100(1).

<sup>14</sup> See NRS 244.100(1); Carson City Charter §2.100(2). The notice also must include the date for the public hearing discussed in the next paragraph. See NRS 244.100(1).

<sup>15</sup> See Carson City Charter §2.110(2); NRS 244.100(1).

<sup>16</sup> Carson City Charter §2.110(2); see NRS 244.100(1) (“The board shall adopt or reject the ordinance, or the ordinance as amended, within 35 days after the date of the close of the final public hearing ....”)

### **C. Amendment of Originally Proposed Ordinance**

An amendment procedure is expressly integrated within the ordinance review process.<sup>17</sup> The Carson City Charter is particularly clear in this regard, stating,

At a regular meeting or adjourned meeting of the Board following the proposal of an ordinance, it must be read as first introduced, *or as amended*, and thereupon the proposed ordinance must be finally voted upon or action thereon postponed.<sup>18</sup>

Thus, it is clear that the Board's discretion in considering an ordinance is not confined to an up or down vote on the ordinance as initially proposed at first reading. This compels one of three conclusions: (1) The Board can amend an ordinance during first reading; (2) The Board can amend an ordinance during second reading; or (3) Both.<sup>19</sup>

## **II. ANALYSIS**

### **A. It is the opinion of this office that the Board may amend an ordinance during first reading and second reading.**

The text and context of Carson City Charter §2.110 authorize amendment by the Board at the first reading and the second reading.

When the language of legislation is "plain and unambiguous," it must be applied in accordance with its text.<sup>20</sup> Fairly read, the law regulating the ordinance process gives the Board legal authority to amend a proposed ordinance at both the first reading and the second reading by expressly establishing the Board's authority to amend a proposed ordinance, and not restricting the opportunity for amendment to either the first reading or the second reading.

This conclusion finds contextual support as well. In their entirety, the relevant provisions of the Carson City Charter state:

<sup>17</sup> See Carson City Charter §2.110(1)-(2); NRS 244.100(1).

<sup>18</sup> See Carson City Charter §2.110(2) (emphasis added).

<sup>19</sup> Amendment requires action by the Board, and the Board can only act during a meeting. See NRS 241.020 and 241.036.

<sup>20</sup> *State v. Terracin*, 125 Nev. 31, 34, 199 P.3d 835, 837 (Nev. 2009) (interpreting plain language of statute to tie length of license revocation period to criminal penalty for driving under the influence) (citing *Cirac v. Lander County*, 95 Nev. 723, 729, 602 P.2d 1012, 1015 (1979) (quoting *State of Nevada v. Washoe County*, 6 Nev. 104, 107 (1870))) (internal quotation marks omitted).

All proposed ordinances when first proposed must be read to the Board by title, after which an adequate number of copies of the proposed ordinance must be filed with the Clerk for public distribution.... [N]otice of the filing must be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in Carson City at least 10 days before the adoption of the ordinance. The Board shall adopt or reject the ordinance *or an amendment thereto*, within 45 days after the date of publication.<sup>21</sup>

This provision forms the chronological sequence of the ordinance process. First, a “proposed ordinance” is presented to the Board at first reading. Second, the “proposed ordinance” is filed with the Clerk, and notice of the filing is published. And third, the Board votes on “the ordinance or amendment thereto” at second reading.

The Board’s authority to amend the proposed ordinance during first reading is implicit in the chronology. Only after first reading can the “proposed ordinance” be filed with the Clerk and published. Mandating that the “proposed ordinance” be filed after the first reading would be superfluous if the content of the “proposed ordinance” could not be changed during first reading.

The Board’s authority to amend during second reading is contextually explicit. The first reference to an amendment occurs in a sentence addressing the meeting at which the Board “shall adopt or reject the ordinance.” By definition, this is the second reading. If amendment was restricted to the first reading only, the reference is misplaced in a sentence addressing the second reading.

Additionally, the critical clause in the final sentence of Carson City Charter §2.110 provides, “The Board shall adopt or reject the ordinance or an amendment thereto ....” As used in that clause, “an amendment thereto” refers to an amendment of “the ordinance.” In turn, “the ordinance” as used in that clause refers to the measure under consideration at second reading. In contrast, the measure under consideration at first reading is referred to in §2.110(1) as “the proposed ordinance.”

It is also meaningful that the law allows for adoption of an ordinance up to 35 days after the public hearing<sup>22</sup> and up to 45 days after publication.<sup>23</sup> The authorization of such a significant period of time for the ultimate adoption of an ordinance reasonably suggests that the ordinance process is designed to give the Board an opportunity to refine the measure at the second reading.

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<sup>21</sup> Carson City Charter §2.110(1) (footnote added) (emphasis added).

<sup>22</sup> See NRS 244.100(1).

<sup>23</sup> See Carson City Charter §2.110(1).

For these reasons, a fair reading of the text and context of the relevant provisions indicates a proposed ordinance may be amended at the first reading or the second reading or both.

**1. Restricting amendment opportunities would encumber the Board's legislative power and limit the public's participation in the legislative process, thereby impeding the purposes of the applicable provisions.**

In general, the purpose of the Carson City Charter provisions and statutes that regulate the ordinance process is to establish an orderly and predictable procedure for the preparation, introduction, evaluation, and revision of legislation.<sup>24</sup> The ordinance process is also deliberately inclusive, ensuring the public has notice and an opportunity to be heard in advance of the Board's decision on legislation. In this way, the ordinance process is designed to be a collaborative effort among Carson City support staff, the Board, and the public. The Board, supported by staff, "makes"<sup>25</sup> or "frames"<sup>26</sup> legislation. The public then has an opportunity to provide the Board input concerning the legislation. Based on this input and deliberation among members of the Board, revisions may be made to the legislation. And, ultimately, the Board decides whether to adopt or reject the measure.

The verbs associated with the Board's legislative function connote a process that is not necessarily limited to a binary choice about the legislation. To "make," or "frame" an ordinance must be distinguished from a mere decision to "enact" or "reject" that ordinance. Further, the public's role in the ordinance process is not limited to advocacy in support and advocacy against a measure. The whole purpose of a public *hearing* is to allow members of the public to articulate a position on the proposed legislation. For some that position may be a simple and direct, "yea" or "nay." But for others, the position may be more complex. It may be "yea," but the legislation can be improved. For others, it may be "nay," but if a particular portion of the proposal is removed, it becomes a "yea." And, of course, one can imagine a multitude of other variations that do not correspond with a binary position on the proposal.

When possible, the law should be interpreted in a manner that carries out the legislation's purposes and effectuates its intended benefits.<sup>27</sup> Interpreting the

<sup>24</sup> See Carson City Charter §1.010(1).

<sup>25</sup> Carson City Charter §2.090(1).

<sup>26</sup> *Galloway*, 83 Nev. at 20, 422 P.2d at 242.

<sup>27</sup> See *Ex Parte Douglass*, 53 Nev. 188, 191, 295 P. 447, 448 (Nev. 1931) ("It is a cardinal rule of construction that the purpose of a law is to be kept in view and the statute given a fair and reasonable construction with a view to effecting its purpose and object."); *Board of School Trustees v. Bray*, 60 Nev. 345, 354, 109 P.2d 274, 278 (Nev. 1941) ("The court, in interpreting these provisions, must also have in mind the purposes sought to be accomplished and the benefits intended to be attained.")



ordinance process to allow for amendment at both first reading and second reading promotes the Board's fundamental power to craft legislation. Further, such an interpretation facilitates the public's ability to meaningfully participate in the legislative process, which is also an objective of the laws regulating the ordinance process. Both of these interests are objects of the law regulating the ordinance process.

For these reasons, it is our opinion that interpreting the law to allow amendments at both the first reading and the second reading promotes the purposes of those provisions that regulate the ordinance process.

**B. The Board's agenda item and the ordinance title and summary set the substantive limit for amendment.**

Both the first reading and the second reading are subject to Nevada's Open Meeting Law.<sup>28</sup> As such, public notice of the first reading and the second reading must include a written agenda that includes a "clear and complete statement" describing the subject of the ordinance.<sup>29</sup> The Board may not take an action that exceeds the scope of an agenda item.<sup>30</sup> It naturally follows that any amendment must be within the scope of the item as described on the agenda, regardless of whether the amendment is presented during the first reading or the second reading. If the Board wishes to discuss an amendment that exceeds the scope of the agenda item, the matter must be postponed to a later meeting that can be properly noticed to include the scope of the expanded discussion.

For similar reasons, an amendment proposed at the second reading must remain within the scope of the ordinance's title and summary as published after the first reading.<sup>31</sup> Extra notice by publication is required when the Board has an ordinance under consideration. Like the Open Meeting Law, the manifest purpose of the publication requirement is to ensure the public's "right to take part in government" and the "press' ability to report the actions of government."<sup>32</sup> That purpose would be

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<sup>28</sup> See Chapter 241 of NRS.

<sup>29</sup> NRS 241.020(2)(d)(1).

<sup>30</sup> See *Sandoval v. Bd. of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 905 (Nev. 2003) (holding that public bodies violated "plain language" of Open Meeting Law which "requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic"); NRS 241.036 ("The action of any public body taken in violation of any provision of this chapter is void."); see also *Nevada Open Meeting Law Manual* §6.03 at 64-65 (Attorney General Aaron Ford) (12<sup>th</sup> ed. 2019).

<sup>31</sup> As a practical matter, the language of the published title and summary will necessarily be substantially similar if not identical to the agenda item description in most circumstances. As such, it is difficult to conceive of an amendment that would be within the scope of the agenda item but beyond the scope of the published title and summary. Consequently, the analysis explained in this paragraph is more academic than practical.

<sup>32</sup> *Sandoval*, 119 Nev. at 154, 67 P.3d at 905 (citation omitted).

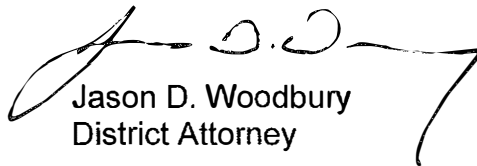
frustrated if the Board could amend the ordinance in a way that exceeded the subject of the ordinance as expressed in the published title and summary. Such a result would make the publication requirement not just ineffectual, but misleading as well.

For these reasons, it is the opinion of the Carson City District Attorney's office that an amendment to a proposed ordinance violates the law if it exceeds the scope of the associated agenda item at first reading or second reading or if it exceeds the scope of the ordinance's title and summary as published prior to the second reading. The Board may consider any amendment that is within the scope of the agenda item and the ordinance's published title and summary.

**III. CONCLUSION**

The Board may amend a proposed ordinance at first reading so long as the amendment is within the scope of the applicable agenda item. The Board may amend a proposed ordinance at second reading so long as the amendment is within the scope of the agenda item and does not require modification of the proposed ordinance's title or summary as published prior to the second reading.<sup>33</sup>

Sincerely,



Jason D. Woodbury  
District Attorney

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<sup>33</sup> The questions addressed in this opinion have periodically been discussed utilizing different terminology. This office has previously advised the Board that the procedural permissibility of an amendment turned on whether or not the amendment was "substantive." After reviewing the law, it is our opinion that our use of the terms "non-substantive" and "substantive" imprecisely articulates the distinction between an amendment that is allowed and an amendment that is prohibited. The dispositive issue is not whether an amendment is "substantive," an inherently amorphous question anyway, but whether it is properly noticed for Board action. In part, the object of this opinion is to reset the terminology regarding this issue toward more legally definitive ground.