



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** September 3, 2020

Staff Contact: Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action to adopt, on second reading, Bill No. 111, an ordinance revising certain qualification criteria for the office of Supervisor on the Board of Supervisors in accordance with the qualification requirements established by the Carson City Charter. (Nancy Paulson, npaulson@carson.org)

Staff Summary: This proposed ordinance amends the existing language in Carson City Municipal Code ("CCMC") 2.02.030, which establishes qualification criteria for the office of Supervisor on the Board of Supervisors, for consistency with the qualification criteria set forth in the Carson City Charter ("Charter") which is controlling and supersedes any conflicting language in CCMC. The Board of Supervisors accepted the business impact statement prepared in accordance with Nevada Revised Statutes ("NRS") Chapter 237 and introduced the ordinance on first reading at its meeting of August 20, 2020.

Agenda Action: Ordinance - Second Reading **Time Requested:** 5 mins

Proposed Motion

I move to adopt on second reading, Bill No. 111, Ordinance No. 2020 - _____.

Board's Strategic Goal

Efficient Government

Previous Action

CCMC 2.02.030, which sets forth the qualification criteria for the office of Supervisor on the Board of Supervisors, was enacted in 1974. Since then, that provision has not been amended.

On August 20, 2020, the Board of Supervisors accepted a business impact statement for the proposed ordinance, prepared in accordance with NRS Chapter 237, and introduced the ordinance on first reading.

Background/Issues & Analysis

This proposed ordinance is intended to correct an inconsistency in an existing CCMC provision. The Charter was enacted by the Nevada Legislature in 1969. When CCMC 2.02.030 was subsequently enacted in 1974 (as section 3 of ordinance no. 1974-7), it mirrored the language of the Charter establishing qualifications for the office of Supervisor, which included a requirement that a Supervisor be a taxpayer on real property located within Carson City. This requirement of real property ownership was repealed when the Charter was amended in 1977. However, CCMC 2.02.030 was never amended to reflect the change in the Charter. Because the provisions of the Charter are controlling and supersede any conflicting provisions in CCMC, this ordinance revises CCMC 2.02.030 for consistency with the Charter.

A more detailed explanation of the foregoing is provided in a legal memorandum prepared by the District Attorney's Office, included as supporting material for this agenda item.

This ordinance, if adopted, does not impose a direct and significant economic burden upon a business, and does not directly restrict the formation, operation or expansion of a business.

Applicable Statute, Code, Policy, Rule or Regulation

NRS Chapter 244; Article 2 of the Carson City Charter.

Financial Information

Is there a fiscal impact? No

If yes, account name/number: Do not adopt the ordinance on second reading.

Is it currently budgeted?

Explanation of Fiscal Impact:

Alternatives

Attachments:

[Ord. Supervisor Qualifications_Second Reading.docx](#)

[2020_August 13_Legal Memo_Supervisor Qualifications Ordinance \(1\).doc](#)

[BIS-s.pdf](#)

Board Action Taken:

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

(Vote Recorded By)

Summary: Revises provisions relating to certain qualification criteria for the office of Supervisor on the Board of Supervisors in accordance with the qualification requirements established by the Carson City Charter.

BILL NO. 111

ORDINANCE NO. 2020 - _____

AN ORDINANCE RELATING TO THE BOARD OF SUPERVISORS; AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.02 (BOARD OF SUPERVISORS), SECTION 2.02.030 (QUALIFICATIONS FOR SUPERVISORS) OF THE CARSON CITY MUNICIPAL CODE TO REVISE CERTAIN QUALIFICATION CRITERIA FOR THE OFFICE OF SUPERVISOR ON THE BOARD OF SUPERVISORS IN ACCORDANCE WITH THE QUALIFICATION REQUIREMENTS ESTABLISHED BY THE CARSON CITY CHARTER; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

The Board of Supervisors of Carson City do ordain:

SECTION I:

That Title 2 (ADMINISTRATION AND PERSONNEL), Chapter 2.02 (BOARD OF SUPERVISORS), Section 2.02.030 (Qualifications for supervisor), is hereby amended (**bold, underlined** text is added, [~~stricken~~] text is deleted) as follows:

2.02.030 – Qualifications [~~for supervisor.~~] of Supervisor.

[~~Each supervisor shall be:~~

- ~~1. A registered voter within the district which he represents and a taxpayer on the real property located within Carson City.~~
- ~~2. A resident of the district which he represents, except that the supervisors elected to the Carson City board of supervisors before the date of the ordinance codified herein shall continue to hold office for the terms for which they were elected.]~~

A person is not eligible to be elected or appointed to office as a Supervisor unless the person meets all qualifications for the office as required by the Carson City Charter and any provision of NRS not otherwise in conflict with the Carson City Charter.

SECTION II:

That no other provisions of Title 2 of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____, 2020.

PROPOSED by _____.

PASSED _____, 2020.

VOTE:

AYES: _____

NAYS: _____

ABSENT: _____

ROBERT L. CROWELL, Mayor

ATTEST:

AUBREY ROWLATT, Clerk-Recorder

This ordinance shall be in force and effect from and after the 18th day of the month of September of the year 2020.

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MEMORANDUM

TO: Board of Supervisors
FROM: Dan Yu, Assistant District Attorney
DATE: August 13, 2020
RE: *Proposed Ordinance to revise certain qualification criteria for the office of Supervisor on the Board of Supervisors.*

BACKGROUND

This memorandum explains the reasoning for the proposed ordinance submitted to this Board of Supervisors (“Board”) for possible adoption, the enactment of which would revise the qualification criteria for the office of Supervisor on the Board of Supervisors (“Board”) as currently set forth in Carson City Municipal Code (“CCMC”) 2.02.030. As more thoroughly discussed below, the proposed amendatory language in the ordinance **does not** alter any existing qualification criteria for the office of Supervisor that are enforceable as a matter of law. Rather, the revisions are intended only to update the current language in CCMC for clarity and compliance with the Carson City Charter (“Charter”), the provisions of which supersede any inconsistency in CCMC regarding Supervisor qualifications. To that end, the proposed ordinance essentially functions as a technical corrections ordinance which does not create new law or modify existing law.

DISCUSSION

Currently, there are three sources of law that address qualifications for the office of Supervisor on the Board: Nevada Revised Statutes (“NRS”) 244.020, Article 2, §2.010 of the Charter and CCMC 2.02.030. NRS 244.020 provides the following:

1. County commissioners must be qualified electors of their respective counties and have such other qualifications as are provided in this chapter.
2. No county or township officer is eligible to the office of county commissioner.¹

¹ Except in limited circumstances, the term “county” as used throughout the Statutes of Nevada or NRS which refer to the several counties apply equally to Carson City. NRS 0.33; *see also* NRS 0.0305 (providing that the terms

Article 2, §2.010 of the Charter provides, in relevant part:

3. Each Supervisor must be:

- (a) An actual and bona fide resident of Carson City for at least 6 months immediately preceding his or her election.
- (b) A qualified elector within the ward which he or she represents.
- (c) A resident of the ward which he or she represents, except that changes affected in the boundaries of a ward pursuant to the provisions of section 1.060 do not affect the right of any elected Supervisor to continue in office for the term for which he or she was elected.

Finally, CCMC 2.02.030 provides the following:

Each supervisor shall be:

- 1. A registered voter within the district which he represents and a taxpayer on the real property located within Carson City.
- 2. A resident of the district which he represents, except that the supervisors elected to the Carson City board of supervisors before the date of the ordinance codified herein shall continue to hold office for the terms for which they were elected.

Of the foregoing provisions, only CCMC 2.02.030 requires real property ownership as a qualification criterion. To understand how these different sources of law addressing the same issue – qualification criteria for the office of Supervisor on the Board – are applied, it is important to discuss the controlling authority of each source in the event of a conflict.

Carson City is a political subdivision of the State of Nevada and a unique form of local government organized as a consolidated municipality, governed by its Charter which was enacted in 1969 with the passage of Senate Bill No. 75.² The Charter was established by the Nevada Legislature “for the government of Carson City.”³ As both an incorporated charter city and a county of Nevada under grant of authority from art. 4, §37[A] of the Nevada Constitution, the municipality of Carson City and its governing body, the Board, are also subject to various provisions of state law that ordinarily apply only to cities, as well as those provisions which normally apply only to counties.⁴ As conditioned in the Charter, however:

“board of county commissioners” or “board,” when used in reference to the boards of county commissioners of the counties in Nevada, include the Board of Supervisors of Carson City); art. 1, §1.010(2) of the Charter.

² See Chapter 213, Statutes of Nevada, 1969 at p. 287.

³ Art. 1, §1.010 of the Charter.

⁴ Nev. Const. art. 4, §37[A] (providing that Carson City, as a consolidated municipality, “shall be considered as a county for the purpose of representation in the legislature, shall have all the powers conferred upon counties by this constitution or by general law, and shall have all the powers as may be conferred by its charter”).

All provisions of Nevada Revised Statutes which are applicable to counties or general to cities (not including chapter 265, 266 or 267 of NRS) or to both which are not in conflict with the provisions of this Charter apply to Carson City. If there is a conflict between the law pertaining to counties and the law pertaining to cities, the Board of Supervisors may, by resolution choose which law applies.⁵

Thus, based on the plain language of the Charter, any provision of NRS that is applicable to counties or general to cities but which conflicts with the Charter is superseded and the Charter instead controls.⁶ Conversely, nothing in the Charter precludes the applicability of a provision in NRS that simply augments the Charter without creating a conflict. Accordingly, to the extent the Nevada Legislature enacts any law that may be applied in harmony with the Charter, those provisions of state law and the Charter may coexist.⁷ When compared, there is no conflict between the qualification criteria for office of Supervisor under NRS 244.020 and the criteria under Article 2, §2.010 of the Charter.

The Charter also establishes the extent of the Board’s authority in adopting ordinances, resolutions and orders. Pursuant to the Charter:

1. The Board may make and pass all ordinances, resolutions and orders not repugnant to the Constitution of the United State of the State of Nevada, or to the provisions of Nevada Revised Statutes or of this Charter, necessary for the municipal government and the management of the affairs of Carson City, and for the execution of all the powers vested in Carson City.⁸

Based on the foregoing, any ordinance that conflicts with or is “repugnant” to the Charter is expressly preempted. As discussed above, Article 2, §2.010 of the Charter does not require real property ownership as a qualification criterion for the office of Supervisor. CCMC 2.02.030 does. Because there is a conflict between these two provisions, the Charter supersedes CCMC.

This conclusion is further supported by a review of the legislative history of Article 2, §2.010 of the Charter and CCMC 2.02.030, which clearly shows that the framers of the Charter

⁵ Art. 1, §1.010(2) of the Charter (emphasis added).

⁶ See State ex rel. Owens v. Doxey, 55 Nev. 186 (1934) (addressing the application of general laws to chartered cities and holding that where art. 8, §8 of the Nevada Constitution, which allows for municipal charters, authorizes municipalities to legislate upon particular subject matters in accordance with home rule charters, such legislation is exclusive of and supersedes acts of the Nevada Legislature concerning the same matter which are inconsistent with it), *overruled on other grounds by* Boulder City v. Kautz, 84 Nev. 454 (1968).

⁷ Courts in Nevada attempt to interpret provisions relating to the same subject in a manner such that the provisions can be rendered compatible with each other whenever possible. State v. Rosenthal, 93 Nev. 36, 45 (1977); see also Dep’t of Motor Veh. v. Lovett, 110 Nev. 473, 479-80 (discussing preemption analysis generally, and holding that where “dual” provisions enacted by different levels of government “neither conflict with nor duplicate each other, they may co-exist without frustrating the purpose of either scheme”).

⁸ Art. 2, §2.100 of the Charter.

specifically intended to remove real property ownership as a qualification criterion.⁹ The legislative history also shows that the existing difference in qualification criteria between the Charter and CCMC provisions is merely the result of a procedural mistake.

Prior to 1977, the Charter did include real property ownership as a qualification criterion for the office of Supervisor. However, that requirement was repealed in 1977. The following excerpt, taken from Senate Bill No. 25 of the 1977 Legislative Session, illustrates the repeal by amendment¹⁰:

Sec. 7. Section 2.010 of the charter of Carson City, being chapter

.....
1977 Statutes of Nevada, Page 204

213, Statutes of Nevada 1969, as last amended by chapter 672, Statutes of Nevada 1969, is hereby amended to read as follows:

Sec. 2.010 Board of supervisors: Qualifications; election; term of office; salary.

1. The legislative power of Carson City is vested in a board of supervisors consisting of five supervisors, including the mayor.
2. The mayor shall be:
 - (a) An actual and bona fide resident of Carson City for at least 6 months prior to his election.
 - (b) A ~~registered voter~~ ~~qualified elector~~ within Carson City. ~~[and a taxpayer on real property located within Carson City.]~~
3. Each supervisor shall be:
 - (a) An actual and bona fide resident of Carson City for at least 6 months prior to his election.
 - (b) A ~~registered voter~~ ~~qualified elector~~ within the ward which he represents. ~~[and a taxpayer on real property located within Carson City.]~~
 - (c) A resident of the ward which he represents, except that changes effected in ward boundaries pursuant to the provisions of section 1.060 ~~[shall do]~~ not affect the right of any elected supervisor to continue in office for the term for which he was elected.
4. All supervisors, including the mayor, shall be voted upon by the registered voters of Carson City at large and shall serve for terms of 4 years.
5. The supervisors, including the mayor, shall receive annual salaries in the amount specified in NRS 245.043.

CCMC 2.02.030 was enacted in 1974 and mirrored the Charter language to require real property ownership, but it was never subsequently amended for consistency with the change in the Charter language.¹¹ Therefore, the conflict in language between the Charter and CCMC is the result of a procedural failure to update CCMC.

⁹ Intent is the controlling consideration in statutory interpretation. County of Clark ex rel. Univ. Med. Ctr. v. Upchurch, 114 Nev. 749, 753 (1998). The plain meaning of a provision's language may be supported by the legislative history of the provision. See, e.g., Gaines v. State, 116 Nev. 359, 366-67 (2000). The provisions of a city charter or ordinance may be generally construed according to these same rules of statutory construction. Carson City v. Red Arrow Garage, 47 Nev. 473, 484 (1924); Rollo v. City of Tempe, 586 P.2d 1285, 1286 (Ariz. 1978).

¹⁰ Chapter 98, Statutes of Nevada, 1977 at p. 203-04 (red indicates the language to be stricken). Article 2, §2.010 of the Charter was amended again in 1985, but that amendment is irrelevant to this analysis.

¹¹ See §3 of Ord. 1974-7.

Based on the legislative history of the Charter provision, real property ownership as a qualification criterion for the office of Supervisor was deliberately repealed by the framers of the Charter. Because the Charter supersedes the conflict in language as codified in CCMC, the result is that real property ownership as required by CCMC 2.02.030 is unenforceable as a matter of law.

CONCLUSION

A seated Supervisor or a candidate for the office of Supervisor is not required to be the owner of real property in Carson City. Although adoption of the proposed ordinance amending CCMC 2.02.030 is perhaps not absolutely necessary, it is advisable because it would remove any confusion regarding qualification criteria for the office of Supervisor by eliminating the conflict in language between the Charter and CCMC. In turn, this would promote transparency in government by facilitating clarity in law. It should be noted again, however, that the proposed ordinance does not in any way create new law or revise existing law with regard to qualification criteria for the office of Supervisor in Carson City.



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

AN ORDINANCE RELATING TO THE BOARD OF SUPERVISORS; AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.02 (BOARD OF SUPERVISORS), SECTION 2.02.030 (QUALIFICATIONS FOR SUPERVISORS) OF THE CARSON CITY MUNICIPAL CODE TO REVISE CERTAIN QUALIFICATION CRITERIA FOR THE OFFICE OF SUPERVISOR ON THE BOARD OF SUPERVISORS IN ACCORDANCE WITH THE QUALIFICATION REQUIREMENTS ESTABLISHED BY THE CARSON CITY CHARTER; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

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

N/A; notice provided by publication on the agenda for the August 20, 2020 Board of Supervisors meeting. No trade associations or businesses are affected by this proposed ordinance and therefore notice to trade associations or owners and officers of businesses is NOT required under NRS 237.080.

b. Summary of comments

N/A

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:

N/A

b. Beneficial effects:

N/A

c. Direct effects:

N/A

d. Indirect effects:

N/A

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:*

N/A

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

N/A

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:*

N/A

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

This proposed ordinance incorporates by reference, and therefore duplicates, the same qualification criteria for the office of Supervisor as set forth in the Carson City Charter. The amendatory language is intended for consistency with the Charter provision. CCMC 2.02.030 has not been amended since its enactment in 1974 and conflicts with the current language of the Charter, which supersedes conflicting CCMC provisions.

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

This ordinance does not propose a new fee.

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 Nancy Paulson, Carson City Manager, 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, Nancy Paulson, the Carson City Manager, hereby certify that to the best of my knowledge and belief, the information contained herein was properly prepared and accurate.

Nancy Paulson
Signature

8/12/2020
Date

Nancy Paulson
Printed Name