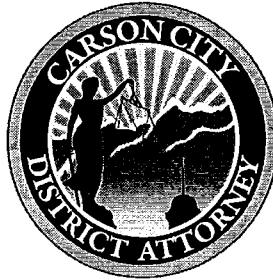


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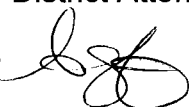


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DATE: April 11, 2016

TO: Members of the Charter Review Committee

CC: Nick Marano, City Manager; Jason D. Woodbury, District Attorney

FROM: Adriana G. Fralick, Chief Deputy District Attorney 

RE: Agenda Item 6 on the April 13, 2016 Charter Review Committee Agenda
-Comments from the public on amendments to the Carson City Charter.

In accordance with the Charter Review Committee's (Committee) duty to advise the Carson City Board of Supervisors (Board) on recommendations for amendments to the City Charter, the Committee solicited comments from the public. These comments are the subject of Agenda Item 6 on the April 13, 2016 Committee agenda. The following are the public comments received followed by a legal analysis where appropriate.

6.A For Possible Action: To recommend to the Board of Supervisors an amendment to the Charter regarding a more transparent way of determining if there is a conflict of interest for an item coming before the Board of Supervisors. (Submitted by David Knighton)

Analysis: No amendment to the Charter is authorized. Chapter 281A (the Ethics in Government Law) of Nevada Revised Statutes (NRS) sets out the conflict of interest analysis that each public officer must undertake whenever he/she may have a conflict of interest on a matter before him/her for action. The Nevada Commission on Ethics is the public body charged with regulating the ethical conduct of public officers. The City Charter is prohibited from establishing a panel to determine whether a Supervisor has a conflict of interest on a matter that is before him/her for action.

6.B For Possible Action: To recommend to the Board of Supervisors an amendment to Section 7.010 of the Charter to add the language - Publish an annual report indicating compliance with the provisions of Sec 7.010, detailing each line item of public debt, no less than 30 days prior to approval of each fiscal year budget. (Submitted by Chris Carver)

No legal analysis required.

6.C For Possible Action: To recommend to the Board of Supervisors an amendment to Section 2.330 of the Charter to add the language - The Board will establish annual performance criteria for the Manager to be incorporated with his/her employment contract. The Board shall, in concert with the Manager, establish annual performance criteria for all non-elected department heads. (Submitted by Chris Carver)

No legal analysis required.

6.D For Possible Action: To recommend to the Board of Supervisors an amendment to the Charter regarding the term "in the interest of the general public" to be defined by geography, demography, or some quantifiable term. (Submitted by Chris Carver)

No legal analysis required.

6.E For Possible Action: To recommend to the Board of Supervisors an amendment to Section 2.180 of the Charter to revise the language regarding a "pound keeper" to reflect that the Board may contract or appoint an animal services officer. (Submitted by Chris Carver)

No legal analysis required.

6.F For Possible Action: To recommend to the Board of Supervisors an amendment to Section 2.320 of the Charter to remove the section wherein advisory boards may be comprised of elected officials. (Submitted by Chris Carver)

Analysis: The current language in Section 2.320 of the Charter is necessary to comply with those provisions of the NRS that require certain advisory boards and commissions to be comprised of individuals that include members of the Board. For example, NRS 350.0115(3) requires the Debt Management Commission be comprised of one representative from the Board. Similarly, NRS 244.3076(2) requires one Board member to be on the Parks and Recreation Commission and NRS 277A.180(3) requires two Board members to be on the Regional Transportation Commission, one of whom must be designated to serve as its Chair. Where Board members are prohibited from serving on an advisory board or commission, it is specifically provided for in statute.

6.G For Possible Action: To recommend to the Board of Supervisors an amendment to the Charter regarding changing the oversight of the Chief of Alternative Sentencing to the courts/judges. (Submitted by Jim Shirk)

Analysis: An amendment to the Charter as suggested may be challenged on constitutional grounds and would require amendments to other authority. Changing the current supervision structure of the Chief of the Department of Alternative Sentencing (DAS) would require overcoming the following challenges:

- Constitutional principles of separation of powers;
- Amending NRS provisions that provide for appointment and supervision by the Board of DAS and its Chief (see NRS 211A.080 and NRS 211A.100) and amending corresponding Carson City Municipal Code provisions to provide for new structure;
- Amending the current City Manager employment contract that delegates the Board's supervisory duties of the DAS and its Chief to the City Manager (see contract between City and Nick Marano, Section 2.2.3—Control and Supervision).

6.H For Possible Action: To recommend to the Board of Supervisors an amendment to the Charter regarding the appointment of members to the Community Development Block Grant Application Review Workgroup. (Submitted by Jim Shirk)

Analysis: Amending the Charter to provide for appointment of members of the Community Development Block Grant Application Review Workgroup (Workgroup) would require its compliance with NRS Chapter 241—Nevada's Open Meeting Law as well as possible frequent revisions of the Charter. Under the current appointment procedure, the volunteers for the Workgroup are selected from interested individuals, many are graduates of the Chamber of Commerce's Carson City Leadership Program. These volunteers work with City staff in reviewing grant applications to narrow down recommendations to the Board. This process is administrative and not subject to Open Meeting Law requirements. Should the Charter be amended as suggested, future meetings for this group would be subject to the Open Meeting Law. This would require public notices and agendas be posted in compliance with the law as well as opportunity for public comment. Public input is already provided for at the Board level where Workgroup/staff recommendations are considered by the Board. Additionally, the U.S. Department of Housing and Urban Development (HUD) has certain requirements as to the make-up of the Workgroup that change from time to time that could mandate more frequent Charter amendments in order to comply with HUD regulations.

6.I For Possible Action: To recommend to the Board of Supervisors an amendment to the Charter regarding impaneling a grand jury. (Submitted by Jim Shirk)

Analysis: The initiation of a Grand Jury is regulated by Nevada Law which establishes three methods by which a Grand Jury may be initiated. First, NRS 6.110(1) and NRS 6.120(1) allow the presiding District Judge in the jurisdiction to order that a Grand Jury be impaneled. The second method is established by NRS 6.130(1). That method begins with an affidavit or petition filed by a taxpayer and accompanied by at least two corroborating affidavits. The affidavits must provide "reasonable evidence" upon which to base a belief that a public official has acted improperly and that the improper conduct has occurred within the applicable statute of limitations. The presiding District Judge must act on the matter within five days. If denied, the District Judge's decision can be appealed. Finally, a Grand Jury may be initiated by a petition process. NRS 6.132 provides that a Petitioners' Committee, consisting of five registered voters, may file an affidavit which includes "a statement explaining the necessity for summoning a grand jury." Within 180 days of the filing, Petitioners must file petition with signatures of registered voters in a number at least 25% of the total number of voters in the last general election. Within 20 days after the petition is filed, the Clerk must certify the petition as sufficient or insufficient. If sufficient, the District Court must summon a Grand Jury. If insufficient, the Clerk's decision may be appealed.

The Grand Jury process, in general, and the initiation of a Grand Jury, specifically, is comprehensively regulated by the Nevada Constitution and existing Nevada statutes. Carson City is constitutionally prohibited from enacting particular legislation concerning a Grand Jury applicable only to Carson City. See *Nev. Const.*, art. IV, §20 (prohibiting "special laws" regulating how Grand Jury is summoned, impaneled or compensated among Nevada's counties).

The public comment recommendation on this item is for a Grand Jury examination of the City's accounting practices. Attached as Exhibit 1 is a list of audit requirements for the City and the City's compliance with such requirements.

EXHIBIT 1

- 1) The City is required by NRS 354.624 to provide for an annual audit of all of its financial statements. Each annual audit must cover the business of the local government during the full fiscal year. It must be a financial audit conducted in accordance with generally accepted auditing standards in the United States, including findings on compliance with statutes and regulations and an expression of opinion on the financial statements. The Department of Taxation shall prescribe the form of the financial statements, and the chart of accounts must be as nearly as possible the same as the chart that is used in the preparation and publication of the annual budget.
- 2) The City is also required by the US Office of Management & Budget A-133 to have an annual audit, known as a single audit, of the City's federal grant programs.

Under Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (Circular A-133), those governments or organizations that expend \$750,000 or more in federal awards during the fiscal year must do the following:

- a) Maintain internal control for federal programs.
 - b) Comply with the laws, regulations, and the provisions of contracts or grant agreements.
 - c) Prepare appropriate financial statements, including the schedule of expenditures of federal awards (SEFA).
 - d) Ensure that the required single audits are properly performed and submitted when due.
 - e) Follow up and take corrective actions on audit findings.
- 3) The City has an audit committee whose purpose according to Municipal code 2.14.020 is as follows:

The role of the Carson City audit committee is to maintain oversight of the auditing function, both internal and external resulting in increased integrity and efficiency of the audit processes for the city and the city's system of internal controls and financial reporting. The committee has three primary characteristics for it to successfully fill its obligations:

- a) Independence. The Carson City audit committee will be independent both in fact and in appearance and requires processes to be in place to ensure such independence is maintained at all times.
- b) Communication. The Carson City audit committee will maintain an open line of communication with the board of supervisors, city management, internal

and external auditors; providing direction for the city's audit function and a framework of accountability.

- c) Accountability. The Carson City audit committee contributes to the integrity of the financial reporting process and reinforces the culture of a strong system of internal controls throughout the city.

The Carson City audit committee shall provide oversight to the city's internal controls by assuring that the system of internal controls established by management are reviewed on a regular and systematic basis for functionality and effectiveness. The Carson City audit committee's duties shall include, but are not limited to, development of the risk assessment and annual work plan, review of all individual audit reports, review of the annual report of audits completed, review the status of corrective actions, the annual budget, and the performance of the internal auditor. Upon completion of these reviews, the Carson City audit committee will make appropriate recommendations to the board of supervisors.

- 4) The City also engages Moss Adams to perform internal audit functions. Each year the Board of Supervisors approves the audit work plan which outlines the projects to be performed by Moss Adams. Any findings as a result of these projects are brought to the Board for their recommendation and / or approval of a remediation plan.

Applicable NRS:

NRS 354.624 Annual audit: Requirements; designation of auditor; scope and disposition; dissemination; prohibited provision in contract with auditor.

1. Each local government shall provide for an annual audit of all of its financial statements. A local government may provide for more frequent audits as it deems necessary. Except as otherwise provided in subsection 2, each annual audit must be concluded and the report of the audit submitted to the governing body as provided in subsection 6 not later than 5 months after the close of the fiscal year for which the audit is conducted. An extension of this time may be granted by the Department of Taxation to any local government that submits an application for an extension to the Department. If the local government fails to provide for an audit in accordance with the provisions of this section, the Department of Taxation shall cause the audit to be made at the expense of the local government. All audits must be conducted by a certified public accountant or by a partnership or professional corporation that is registered pursuant to chapter 628 of NRS.

2. The annual audit of a school district must:

(a) Be concluded and the report submitted to the board of trustees as provided in subsection 6 not later than 4 months after the close of the fiscal year for which the audit is conducted.

(b) If the school district has more than 150,000 pupils enrolled, include an audit of the expenditure by the school district of public money used:

- (1) To design, construct or purchase new buildings for schools or related facilities;
- (2) To enlarge, remodel or renovate existing buildings for schools or related facilities;

and

(3) To acquire sites for building schools or related facilities, or other real property for purposes related to schools.

3. The governing body may, without requiring competitive bids, designate the auditor or firm annually. The auditor or firm must be designated, and notification of the auditor or firm designated must be sent to the Department of Taxation not later than 3 months before the close of the fiscal year for which the audit is to be made.

4. Each annual audit must cover the business of the local government during the full fiscal year. It must be a financial audit conducted in accordance with generally accepted auditing standards in the United States, including findings on compliance with statutes and regulations and an expression of opinion on the financial statements. The Department of Taxation shall prescribe the form of the financial statements, and the chart of accounts must be as nearly as possible the same as the chart that is used in the preparation and publication of the annual budget. The report of the audit must include:

(a) A schedule of all fees imposed by the local government which were subject to the provisions of NRS 354.5989;

(b) A comparison of the operations of the local government with the approved budget, including a statement from the auditor that indicates whether the governing body has taken action on the audit report for the prior year;

(c) If the local government is subject to the provisions of NRS 244.186, a report showing that the local government is in compliance with the provisions of paragraphs (a) and (b) of subsection 1 of NRS 244.186; and

(d) If the local government is subject to the provisions of NRS 710.140 or 710.145, a report showing that the local government is in compliance with the provisions of those sections with regard to the facilities and property it maintains and the services it provides outside its territorial boundaries.

5. Each local government shall provide to its auditor:

(a) A statement indicating whether each of the following funds established by the local government is being used expressly for the purposes for which it was created, in the form required by NRS 354.6241:

(1) An enterprise fund.

(2) An internal service fund.

(3) A fiduciary fund.

(4) A self-insurance fund.

(5) A fund whose balance is required by law to be:

(I) Used only for a specific purpose other than the payment of compensation to a bargaining unit, as defined in NRS 288.028; or

(II) Carried forward to the succeeding fiscal year in any designated amount.

(b) A list and description of any property conveyed to a nonprofit organization pursuant to NRS 244.287 or 268.058.

(c) If the local government is subject to the provisions of NRS 244.186, a declaration indicating that the local government is in compliance with the provisions of paragraph (c) of subsection 1 of NRS 244.186.

(d) If the local government is subject to the provisions of NRS 710.140 or 710.145, a declaration indicating that the local government is in compliance with the provisions of those sections with regard to the facilities and property it maintains and the services it provides outside its territorial boundaries.

6. The opinion and findings of the auditor contained in the report of the audit must be presented at a meeting of the governing body held not more than 30 days after the report is submitted to it. Immediately thereafter, the entire report, together with the management letter required by generally accepted auditing standards in the United States or by regulations adopted pursuant to NRS 354.594, must be filed as a public record with:

- (a) The clerk or secretary of the governing body;
- (b) The county clerk;
- (c) The Department of Taxation; and
- (d) In the case of a school district, the Department of Education.

7. After the report of the audit is filed by the local government, the report of the audit, including, without limitation, the opinion and findings of the auditor contained in the report of the audit, may be disseminated by or on behalf of the local government for which the report was prepared by inclusion, without limitation, in or on:

- (a) An official statement or other document prepared in connection with the offering of bonds or other securities;
- (b) A filing made pursuant to the laws or regulations of this State;
- (c) A filing made pursuant to a rule or regulation of the Securities and Exchange Commission of the United States; or
- (d) A website maintained by a local government on the Internet or its successor,

without the consent of the auditor who prepared the report of the audit. A provision of a contract entered into between an auditor and a local government that is contrary to the provisions of this subsection is against the public policy of this State and is void and unenforceable.

8. If an auditor finds evidence of fraud or dishonesty in the financial statements of a local government, the auditor shall report such evidence to the appropriate level of management in the local government.

9. The governing body shall act upon the recommendations of the report of the audit within 3 months after receipt of the report, unless prompter action is required concerning violations of law or regulation, by setting forth in its minutes its intention to adopt the recommendations, to adopt them with modifications or to reject them for reasons shown in the minutes.

(Added to NRS by 1965, 735; A 1967, 939; 1969, 800; 1971, 1344; 1973, 184; 1975, 451, 1688, 1801; 1977, 547; 1981, 313, 1768; 1987, 1043; 1989, 620; 1995, 1896, 1935; 1997, 574, 1611, 1739; 1999, 472, 2945; 2001, 1810; 2003, 1231; 2005, 292, 1344)