

**A RESOLUTION TO PLACE AN ADVISORY QUESTION ON THE NOVEMBER 2018 SPARKS GENERAL ELECTION BALLOT ASKING SPARKS'S VOTERS IF THE OFFICE OF THE SPARKS CITY ATTORNEY SHOULD CONTINUE TO BE AN ELECTED, NON-PARTISAN OFFICE WITHIN SPARKS'S GOVERNMENT.**

**WHEREAS**, the City Attorney is an elected, non-partisan official within the Executive Branch of the government of Sparks; and

**WHEREAS**, the City of Sparks was created by Charter enacted and passed by the Nevada Legislature in 1975; and

**WHEREAS**, prior to the enactment of the Sparks City Charter, a Ballot Question was presented to the voters of Sparks in November 1974; and

**WHEREAS**, the 1974 Ballot Question asked Sparks' voters whether their City Attorney should be a non-partisan, elected official; and

**WHEREAS**, in response to the November 1974 ballot question, 7,893 voters said "yes" while 670 voters said "no"; and

**WHEREAS**, in response to the overwhelming support of Sparks' voters for a non-partisan elected City Attorney, Article I, Section 1.060(1)(c) of the Sparks City Charter thereafter defined the Sparks City Attorney as an Elected Officer of the City of Sparks; and

**WHEREAS**, in 1991 the Sparks Charter Committee directed that an Advisory Question be submitted to Sparks' voters asking whether the office of Sparks City Attorney should remain an elected, non-partisan position; and

**WHEREAS**, in response to the 1991 Advisory Question, Sparks' voters responded affirmatively to keep the office of the Sparks City Attorney as an elected, non-partisan position within the City's government; and

**WHEREAS**, in 2007 and 2017 the Nevada Legislature considered amending the Sparks City Charter and thereby change the office of the City Attorney to an appointed position under the direction and control of the City Manager/City Council; and

**WHEREAS**, the Sparks City Council believes that it is appropriate to ask Sparks' voters whether they wish to retain their right to vote for the City Attorney or whether the City Attorney should be appointed by, and under the direction and control of, the Sparks City Council.

**NOW, THEREFORE, BE IT RESOLVED BY THE SPARKS CITY COUNCIL:**

**Section 1:** That the Sparks City Council seeks the input and opinion of the voters in Sparks whether they wish to keep their right to vote for the City Attorney

**Section 2:** That it is therefore the request of the Sparks City Council to place an Advisory Question on the November 2018 General Election ballot asking the voters of Sparks whether they want to keep their right to vote for the Sparks City Attorney

**Section 3:** That the City Council of the City of Sparks hereby adopts the 2018 Advisory Question (attached as Exhibit A)

**Section 4:** The results on the voting of this advisory question does not place any legal requirement on the governing body, any member of the governing body or any officer of the political subdivision.

**Section 5: General Provisions.** This Resolution is effective upon passage. The officers of the City are hereby authorized and directed to take all action necessary to effectuate the provisions of this Resolution by placing the herein adopted Advisory Question onto the November 2018 Sparks General Election Ballot. The provisions of this Resolution shall be liberally construed to effectively carry out its purposes. In the event that any section of this Resolution or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this Resolution.

**PASSED AND ADOPTED** this 29th day of May, 2018, by the following vote of the City Council:


<b>AYES:</b>	<u>Abbott, Lawson, Smith, Bybee, Dahir</u>
<b>NAYS:</b>	<u>None</u>
<b>ABSENT:</b>	<u>None</u>
<b>ABSTAIN:</b>	<u>None</u>

**APPROVED** this 29th day of May, 2018, by:

  
\_\_\_\_\_  
**GENO MARTINI**  
Mayor

Attest:

   
**THERESA GARDNER**  
City Clerk

**APPROVED AS TO FORM**  
  
**CHESTER H. ADAMS**  
City Attorney

## **Exhibit A**

### **SPARKS ADVISORY QUESTION 1:**

**The following question is advisory ONLY:**

**Should the City Attorney remain an elected non-partisan office within Sparks's government?**

Yes..... No.....

### **EXPLANATION**

The Sparks City Attorney is an elected, non-partisan office within the Executive Branch of Sparks's government. The City Attorney is elected to a four-year term of office and serves as legal counsel to the Sparks Mayor, City Council, and the various departments within the City of Sparks. The City Attorney represents the City of Sparks in municipal, criminal court proceedings, and in civil litigation before all Nevada and federal courts.

This question is intended to advise the Sparks City Council whether the voters of Sparks desire to retain their right to vote for the City Attorney or relinquish that right and allow the Sparks City Attorney to be appointed.

A "Yes" vote will be used as an indication of the preference of the Sparks voters to retain their right to vote for their City Attorney.

With voter disapproval of this question, the Sparks City Council will consider requesting that the Charter for the City of Sparks be amended to change the City Attorney from an elected, non-partisan position to an appointive position.

This question is advisory in nature only and does not place any legal requirements on the governing body or any officer of the political subdivision or the Nevada Legislature. However, the wishes of the voters of Sparks shall be pursued with all due consideration by the Sparks City Council.

### ANTICIPATED FINANCIAL IMPACT

The direct financial impact of placing an Advisory Question on the ballot is minimal and is not anticipated to cause the City's costs for the 2018 General Election to exceed the currently budgeted \$12,000 to \$15,000 which is already contracted for with the Washoe County Registrar of Voters. Overall, the financial impact of an elected City Attorney is minimal. As an elected position, the costs of an election or re-election campaign is the responsibility of the candidate. There are no taxpayer funds involved with the election or re-election of the City Attorney (the primary costs to Sparks's voters is paying the City Attorney's annual salary and benefits – which would be paid regardless of whether the position was appointed or elected).

Presently it is difficult to determine the exact financial cost to taxpayers of an appointed City Attorney that would serve at the pleasure of the Sparks City Council. City staff time and resources would be allocated to find a suitable candidate for appointment. The process of advertising, searching, interviewing, and recommending possible appointees to the Sparks City Council would create some new cost. The City Council would presumably engage in the public process of interviewing, deliberating, and ultimately selecting what it believes to be an appropriate appointee. If an appointed City Attorney is thereafter unable to perform their duties or the City Council dismisses the City Attorney, the selection process starts over, requiring the expenditure of staff time and City resources.

Currently Article 1, Section 1.060(5) of the Sparks City Charter stipulates that an elected officer is to receive a salary in an amount fixed by the City Council. This amount is determined by City Ordinance pursuant to SMC 2.04.030 and 2.04.020. These provisions would no longer be applicable in the event the City Attorney is appointed.

Additional costs could possibly also be incurred if the candidate the City Council appoints demands contractual provisions that the currently elected City Attorney is not entitled to under the City Charter. These provisions could include: a "signing bonus" as an incentive to assume the responsibilities of the City Attorney, a higher salary than the current City Attorney, a scheduled salary raise, end-of-year-bonuses, and a contractual "buy-out" provision.

### **Arguments FOR Question 1:**

Approval of this question maintains Sparks's citizens' right to vote for their City Attorney; a right that has been in existence since the City's first Charter of 1975. The voters of Sparks deserve to have a say in who their City Attorney is and should have the choice of removing a City Attorney that does not adequately protect their community.

An appointed City Attorney cannot effectively serve the legal interests of Sparks's citizens and the political interests of an elected appointing body. As an appointed position, the City Attorney would not be held accountable to the community, but to those who make the appointment. Consequently, legal advice given by an appointed City Attorney would likely be in accordance with the political climate and agendas of those serving on the appointing body. As a result, the City Attorney loses sight of their responsibility to the citizens of Sparks.

Appointment of a City Attorney creates an ethical dilemma if the City Attorney refuses to legally scrutinize the City Council's actions for fear of getting fired. If a City Council member is conducting city business that is not ethically sound, an appointed City Attorney may not speak out if they believe it will put their job in jeopardy. In addition, if the City Attorney gives legal advice that goes against a political agenda- even if that advice is legally correct – the City Council is free to fire the City Attorney, without any input from the Sparks voters.

While an elected position gives the voters an option to retain a City Attorney or vote someone new into the position, an appointed position would destroy that option altogether. With the appointment rather than election of the City Attorney, there is a possibility that the City Attorney could be appointed indefinitely. The Sparks voters would then have no way to directly remove the City Attorney.

Once the choice for appointing the City Attorney is made, the voters of Sparks will lose their right to elect him or her in the future. Sparks's voters should not lose a voting right that they have maintained for the past 40 years

### **Arguments AGAINST Sparks Advisory Question 1:**

The rejection (a “No” vote) of this question would support future legislation for appointing a City Attorney. Out of twelve charter cities in Nevada, ten appoint their City Attorneys while two cities, Sparks being one of them, still elect their City Attorney. Choosing to appoint an attorney would bring Sparks into conformance with the majority of Nevada charter cities.

Since a City Attorney candidate receives no campaign funds from the City, they must either personally finance an election campaign or raise campaign funds from donors. This can create a barrier to producing the best candidates because campaigning for office is measured on campaign finances and not necessarily on how qualified an individual is to perform the duties of a public office.

Money received from private campaign donors could create bias, even if unintentionally. By donating funds to the election campaign, donors may seek special favors in return. This could result in a public office run by special interest groups instead of by the rule of law.

Furthermore, an election undermines the City Attorney’s ability to do their job. The voters of Sparks need representation by an attorney who is solely devoted to the job and is not distracted by the next election cycle. An election can cause the City Attorney to make legal decisions based on what looks best for their public image and not on the legally correct decision.

In the end, the process of getting re-elected detracts from the job of giving sound legal advice to the necessary entities. An appointed City Attorney would be able to perform their job to the best of their ability, unimpeded by politics.

Finally, even though Sparks’s voters would no longer be directly voting for the City Attorney, this does not take away all their power and give it to the City Council. If the appointed City Attorney does not meet expectations of voters, the voters of Sparks can simply elect new City Council members who will put in place a new City Attorney suitable to the public. Even if the City Attorney’s position is no longer elected, City Council positions are and councilmembers can be replaced by the Sparks voters.

**Rebuttal to Argument AGAINST:**

While a majority of Nevada charter cities appoint their attorneys, this is a baseless reason for voting to amend the City Charter. While it may be true that Sparks is one of the only cities left with an elected City Attorney, whether Sparks voters decide to appoint or elect their next City Attorney should not be based on the actions of other cities in Nevada. Sparks residents should think about their own voting rights and what they believe is best for their City and not judge it by the standards of larger cities like that of Las Vegas or Henderson who have different ordinances, different politics, and a different way of life.

The opponents of this question would also have you believe that an appointed City Attorney would cost the taxpayers much less than an elected one. However, it would actually cost more. With the demands of salary and benefits every appointed City Attorney will make in addition to the added costs associated with continuously appointing another City Attorney, the taxpayers would incur more costs than an elected City Attorney.

It is also incorrect that the City Council would be unimpeded by the voice of politics in choosing their City Attorney. In actuality, the position is likely to become even more political. Governed by a game of politics and special favors in exchange for appointing a certain candidate, the City Council would appoint an attorney that would bend to their will and not follow the will of the people. In addition, knowing that the City Council holds all the power to fire whenever they see fit, an appointed City Attorney will never be able to think independently and give their unbiased legal advice to a group of people who hold his/her future.

**Rebuttal to argument AGAINST:**

The proponents of this question would have you believe that an appointed candidate from a city other than Sparks is a bad thing. But in actuality, this would prove to be a benefit for Sparks residents. It allows the City Council to search for the best qualified candidate, outside of the constraints of the small City of Sparks. It allows them to find an Attorney who has an understanding of the law and is the best Nevada has to offer. A candidate who is not a Sparks resident is not harmful to Sparks, but an asset. The appointment of a City Attorney allows the City Council to conduct a statewide-search for the best possible candidate with the most amount of legal experience and best legal skills available, not just any attorney that the City Council happens upon in Sparks.