

ASSEMBLY BILL NO. 311—ASSEMBLYMAN ELLISON

MARCH 17, 2021

JOINT SPONSOR: SENATOR GOICOECHEA

Referred to Committee on Government Affairs

SUMMARY—Revises the Charter of the City of Elko.
(BDR S-928)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the City of Elko; requiring the City Council to determine whether the Municipal Court is presided over by an ex officio or appointed Municipal Judge; setting forth the manner of appointing and term of office of an appointed Municipal Judge; revising provisions relating to the salary of a Municipal Judge; setting forth the procedure for selecting and the duties of the administrative judge of the Municipal Court; authorizing a Municipal Judge to employ certain persons; revising provisions relating to the disposition of fines and forfeitures; authorizing the imposition of intermittent periods of incarceration; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires the City Council of the City of Elko to appoint a
2 Municipal Judge. (Elko City Charter, § 1.070) **Section 2** of this bill requires the
3 City Council to determine whether the Municipal Court is to be presided over by
4 the Justice of the Peace of Elko Township as an ex officio Municipal Judge, one or
5 more appointed Municipal Judges, or a combination thereof. **Section 1** of this bill
6 makes a conforming change related to the authority of the City Council to make
7 this determination. **Section 2** also provides the process for appointing a Municipal
8 Judge, the term of a Municipal Judge and how vacancies in that office are filled.
9 **Section 3** of this bill provides that: (1) the salary of an appointed Municipal
10 Judge is fixed by the City Council by resolution; and (2) the salary of an ex officio



Municipal Judge is fixed by resolution of the City Council or by an agreement with Elko County.

Section 4 of this bill: (1) sets forth the process for selecting the administrative judge of the Municipal Court; (2) sets forth the duties of the administrative judge; and (3) authorizes an appointed Municipal Judge to employ and prescribe the duties of employees to assist in administering the affairs of the department of that Municipal Judge.

Existing law requires that all fines and forfeitures for the violation of ordinances be paid into the Treasury of the City in the manner prescribed by ordinance. **Section 5** of this bill provides, instead, that all fines and forfeitures for the violation of ordinances be paid into the Treasury of the City in the manner prescribed by ordinance or applicable law.

Section 6 of this bill authorizes, under certain circumstances, a Municipal Judge to order intermittent periods of incarceration.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1.070 of the Charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, as last amended by chapter 51, Statutes of Nevada 2001, at page 447, is hereby amended to read as follows:

Sec. 1.070 Appointive offices.

1. The City Council shall appoint the following officers:

(a) City Clerk.

(b) City Attorney.

(c) Chief of Police.

(d) ~~Municipal Judge.~~

~~(e)~~ Fire Chief.

~~(f)~~ (e) City Manager.

~~(g)~~ (f) City Engineer, who may be the City Manager.

2. The City Council may establish such other offices and appoint such other officers as it may deem necessary.

Sec. 2. The Charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, at page 474, is hereby amended by adding thereto new sections to be designated as sections 4.012 and 4.014, immediately preceding section 4.020, to read as follows:

Sec. 4.012 Municipal Court.

1. The City Council shall determine whether the Municipal Court is to be presided over by the Justice of the Peace of Elko Township as an ex officio Municipal Judge, one or more appointed Municipal Judges, or a combination thereof.

2. If there is more than one Justice of the Peace of Elko Township, all Justices of the Peace of Elko Township must preside over the Municipal Court as ex officio Municipal Judges, as applicable pursuant to subsection 1.



3. The Municipal Court shall be divided into separate departments for each Municipal Judge, beginning with the letter "A" and proceeding in alphabetical order.

4. The Municipal Court has such power and jurisdiction as set forth in chapter 5 of NRS.

5. The City Council may adopt any ordinance necessary concerning the operation of the Municipal Court that is not otherwise inconsistent with this Charter and the Nevada Constitution.

Sec. 4.014 Appointed Municipal Judges.

If the City Council appoints one or more Municipal Judges pursuant to section 4.012:

1. The City Council must appoint the Municipal Judge in the manner provided for appointive offices of the City;

2. The term of office of the Municipal Judge is 2 years but the Municipal Judge may be removed from office by the City Council before the expiration of the term with or without cause; and

3. Any vacancy in the office of Municipal Judge must be filled by the City Council. The administrative judge may temporarily appoint a person to act as Municipal Judge until the City Council fills the vacancy. If there is no administrative judge at the time a vacancy occurs, the City Manager may temporarily appoint a person to act as Municipal Judge until the City Council fills the vacancy.

Sec. 3. Section 4.020 of the Charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, as last amended by chapter 51, Statutes of Nevada 2001, at page 463, is hereby amended to read as follows:

Sec. 4.020 Municipal Court: **Salaries of** Municipal ~~Judge.~~ **Judges.**

1. The salary of ~~the~~ **an appointed** Municipal Judge must be fixed by the City Council ~~by~~ **by resolution. The City Council shall not increase the salary of an appointed Municipal Judge during the current term unless any increase is set forth in the original resolution setting forth the salary for the current term. If there is more than one appointed Municipal Judge, the salaries of all appointed Municipal Judges must be uniform.**

2. **The salary of an ex officio Municipal Judge must be fixed by resolution of the City Council or by agreement between the City and Elko County.**

Sec. 4. The Charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, at page 474, is hereby amended by adding



thereto new sections to be designated as sections 4.022, 4.024 and 4.026, immediately preceding section 4.030, to read as follows:

Sec. 4.022 Administrative judge: Selection.

1. If there is only one Municipal Judge, that Municipal Judge serves as the administrative judge of the Municipal Court.

2. Except as otherwise provided in this subsection, if there is more than one Municipal Judge, the Municipal Judge with the most seniority serves as the administrative judge. If the Municipal Judge with the most seniority declines to serve as the administrative judge, except as otherwise provided in this subsection, the Municipal Judge with the second most seniority serves as the administrative judge. If two or more Municipal Judges are equal in seniority or if two appointed Municipal Judges with seniority decline to serve as administrative judge, the City Manager must appoint the administrative judge.

Sec. 4.024 Administrative judge: Duties.

1. The administrative judge shall:

(a) Establish and enforce administrative regulations and local rules for the affairs of the Municipal Court;

(b) Schedule trial dates and other matters which pertain to the calendar of the Municipal Court;

(c) Prepare and submit an annual budget for the Municipal Court to the City Council;

(d) Appoint any necessary pro tem Municipal Judges from a list of persons approved by resolution of the City Council if all other Municipal Judges are prohibited from hearing the matter for any reason, including, without limitation, the Revised Nevada Code of Judicial Conduct; and

(e) Perform such other administrative tasks as required by the City Council.

2. The administrative judge may appoint a court administrator, who serves at the pleasure of the administrative judge. The court administrator may be terminated by the administrative judge with or without cause. Any decision to remove the court administrator is final and may not be appealed.

3. If a court administrator is appointed pursuant to subsection 2, the salary of the court administrator must be approved by the City Council. If the court administrator is terminated by the administrative judge, the amount appropriated for the unpaid salary and benefits of the court administrator position reverts to the City's general fund.



Sec. 4.026 Municipal Court: Employees.

1. An appointed Municipal Judge may appoint and prescribe the duties of employees to assist in administering the affairs of the department presided over by that Municipal Judge, including, without limitation, marshals, clerks and interpreters. Subject to appropriation by the City Council, the Municipal Judge may determine the salaries of such employees.

2. Each employee of the Municipal Court serves at the pleasure of the Municipal Judge who appointed the employee and may be removed with or without cause. A decision by a Municipal Judge to terminate an employee is final and may not be appealed.

3. If the employee of a Municipal Judge is terminated, the amount appropriated for the unpaid salary and benefits of that position reverts to the City's general fund.

Sec. 5. Section 4.030 of the Charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, at page 487, is hereby amended to read as follows:

Sec. 4.030 Disposition of fines. All fines and forfeitures for the violation of ordinances shall be paid into the Treasury of the City in the manner to be prescribed by ordinance **or applicable law.**

Sec. 6. The Charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, at page 474, is hereby amended by adding thereto a new section to be designated as section 4.040, immediately following section 4.030, to read as follows:

Sec. 4.040 Intermittent periods of incarceration.

If a sentence of imprisonment is imposed by a Municipal Judge, the Municipal Judge may order intermittent periods of incarceration so long as the entire sentence will be completed within 6 months after the date of sentencing. The periods of incarceration may be varied from time to time with consent of the defendant, but the total time of incarceration must not be increased.

Sec. 7. This act becomes effective on July 1, 2021.

