

Summary: Amends Article 910 (Enforcement) Washoe County Development Code to authorize and provide procedures for the use of administrative and civil procedures set out in WCC Chapter 125 to enforce "development regulations" and provide that aggrieved persons may appeal land use or building code decisions to the Board of Adjustment, and to seek judicial review of Board of Adjustment decisions.

BILL NO. 1682

ORDINANCE NO. 1501

An Ordinance amending Article 910 (Enforcement) of the Washoe County Development Code (Washoe County Code Chapter 110) to authorize and establish procedures for the use of administrative and civil court proceedings available under Washoe County Code Chapter 125 to enforce development regulations (including the Development Code, building codes, and permits, maps, orders and development agreements issued under them) including the possible use of stop work orders, remediation orders, administrative proceedings (including the use of warnings, civil penalties and hearings before administrative hearing officers), summary and judicial abatement proceedings, civil court actions, and revocation of permits and development agreements in addition to the criminal and civil remedies already available under the present Development Code. The ordinance also establishes requirements and procedures for aggrieved persons to appeal zoning and building code decisions of enforcement officials and administrative hearing officers to the Board of Adjustment, and the judicial review of the decisions of the Board of Adjustment. Recommendations include other matters properly related to enforcement of the Development Code.

WHEREAS:

- A. WCC Chapter 125 provides for civil and administrative enforcement procedures for violations of the Washoe County Code, including Chapter 110 (the Development Code), and Article 910 of the Development Code needs to be amended to include said enforcement procedures and supplement them with requirements of NRS Chapter 278 applicable to land use codes.

B. This ordinance is adopted pursuant to a provision in NRS Chapter 278 and therefore is not a "rule" as defined in NRS 237.060.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. A new Section 110.910.02 (Definitions) is hereby added to the Washoe County Code as follows:

Sections:

110.910.00	Purpose
110.910.02	Definitions
110.910.05	Responsibility for Enforcement
110.910.10	Applicability; Prohibitions; and Remedies
110.910.15	Enforcement Procedures
110.910.20	Remedies
110.910.25	Penalties
110.910.30	Notification of Violation

Section 110.910.02 Definitions. For purposes of this article, the following words have the following meanings.

Aggrieved Person. "Aggrieved person" means a person or entity who has suffered a substantial grievance (not merely a party who is dissatisfied with a decision) in the form of either:

- (a) The denial of or substantial injury to a personal or property right, or
- (b) The imposition of an illegal, unjust or inequitable burden or obligation by an enforcement official, the Board of Adjustment or an administrative hearing officer.

Dangerous Structure or Condition. "Dangerous structure or condition" means a structure or condition that is a public nuisance which may cause injury to or endanger the health, life, property or safety of the general public or the occupants, if any, of the real property on which the structure or condition is located. The term includes, without limitation, a structure or condition that:

- (a) Does not meet the requirements of a code or regulation adopted pursuant to NRS 244.3675 with respect to minimum levels of health or safety; or
- (b) Violates an ordinance, rule or regulation regulating health and safety enacted, adopted or passed by the Board, the violation of which is designated as a public nuisance in the ordinance, rule or regulation.

Development Regulation. "Development regulation" means:

- (a) All of the provisions and requirements in the Development Code (as defined in Washoe County Code Section 110.902.15) as it now exists and hereafter may be amended or modified;
- (b) The conditions, provisions and requirements in all permits (special use permits, grading permits, sign permits and the like), development agreements, subdivision maps, parcel maps, division of large parcels, and other orders and agreements authorized under and

whose primary purpose is to implement or apply the provisions in the Development Code as to particular properties;

- (c) Any stop activity order, remediation order, abatement order, or other proceeding authorized in this article; and
- (d) Any ordinance, code or regulation relating to the soundness of structures adopted under NRS 244.3675 and the provisions of any permit or order issued pursuant to such ordinance, code or regulation.

SECTION 2. Washoe County Code Development Code Section 110.910.05 is hereby amended to read as follows in its entirety:

Section 110.910.05 Responsibility for Enforcement. The Board of County Commissioners designates the following persons to be "enforcement officials" with the authority and responsibility of enforcing the development regulations within their assigned areas of responsibility. Enforcement officials may only act within the field of enforcement in which they work. Within the foregoing scope, and subject to any specific provisions in any development regulation, enforcement officials have the power to issue and serve citations under NRS 171.17751, and issue and serve notices and carry out the provisions set forth in this article. Enforcement officials include:

- (a) Building inspectors, code enforcement officers, fire and safety inspectors, and engineering inspectors;
- (b) The Director of Community Development or the Director of the Community Services Department, and all deputies and persons designated by him/her in writing to enforce provisions of development regulations;
- (c) The County Building Official and all deputies and persons designated by him/her in writing;
- (d) The County Engineer and any person designated by him/her in writing; and
- (e) Any other person as specifically provided in a development regulation.

SECTION 3. Section 110.910.10 of the Washoe County Code is hereby amended to read as follows in its entirety:

Section 110.910.10 Applicability; Prohibitions; and Remedies.

- (a) Applicability. Unless otherwise provided in a specific statute, ordinance, code provision or regulation, this article applies to the enforcement of all provisions in development regulations. As there may be procedures and remedies specific to a type of activity being regulated, if a specific provision in another code or regulation conflicts with a specific provision in this article, the other specific provision shall prevail but otherwise, provisions in another code or regulation shall be read together as supplements to the provisions in this article.

- (b) Prohibition; Public Nuisance. Erecting, operating or maintaining any property or structure contrary to the provisions of a development regulation shall be and is hereby declared to be unlawful and a public nuisance. Any property or structure that does not conform to the provisions of an applicable development regulation shall be and is hereby declared to be a public nuisance.
- (c) Misdemeanor Offense. Any person who commits a prohibited act as described above or who violates any of the provisions in a development regulation is guilty of a misdemeanor and upon the conviction thereof, shall be punished by imprisonment in the county jail for not more than six (6) months, or by a fine of not less than \$50 or more than \$1,000, or by fine and imprisonment. Failure to appear in the proper court to answer to such a misdemeanor citation is a separate offense.
- (d) Remedies. An enforcement official may, subject to the procedures and limitations in this article, enforce development regulations through administrative, civil or criminal remedies including but not limited to:
 - (1) Stop activity orders in accordance with this article;
 - (2) Remediation orders in accordance with this article;
 - (3) Administrative enforcement proceedings as provided in this article and the Enforcement Code in Washoe County Code Chapter 125;
 - (4) Abatement proceedings (including summary abatement) as provided in Washoe County Code Chapter 125 and NRS 244.360 through 244.3605;
 - (5) Civil injunctions and relief in accordance with the authority given to the District Attorney in Washoe County Code Chapter 125 and Nevada law regarding civil actions;
 - (6) Criminal citation in accordance with NRS 171.177 through 171.1779 and this article;
 - (7) Revocation of or denial of a violated permit, variance, map or approval through the approving authority;
 - (8) Cancellation by the Board of a development agreement entered into under NRS 278.0205; and,
 - (9) Any other remedy authorized by law.
- (e) Remedies Cumulative. The remedies provided herein shall be cumulative and not exclusive. The conviction and punishment of any person shall not relieve such person from the responsibilities of correcting prohibited conditions or removing prohibited conditions, buildings, structures or improvements and shall not prevent the enforced correction or removal thereof.

SECTION 4. Section 110.910.15 of the Washoe County Code is hereby amended to read as follows in its entirety.

Section 110.910.15 Enforcement Procedures. The following procedures shall apply to enforce the provisions of any development regulation.

- (a) Complaints. Complaints regarding possible violations of a development regulation may be made orally or in writing and shall be referred to the Director of Community Development, the Director of Community Services, the Building Official, the County Engineer or any of their designees, who may assign an enforcement official to investigate and take appropriate enforcement action. Oral complaints may be made anonymously. Enforcement officials and County employees who observe or become aware of possible violations of a development regulation shall discuss the possible violation with the Director of Community Development, the Director of Community Services, the Building Official, the County Engineer or any of their designees, who may direct enforcement actions.
- (b) Selection of Enforcement Mechanism. The enforcement official in his/her discretion may enforce a development regulation in any manner provided in this article.
- (c) Stop activity order and remediation order:
- (1) If an enforcement official observes construction, grading, or other land use activity in progress that is or is likely to be a violation of a development regulation, and the activity must be stopped to prevent unsafe conditions, or irreparable harm or damages, the enforcement official may issue and serve a stop activity order. Upon issuance of a stop activity order all activity described in the order must cease.
- (2) The stop activity order shall:
- (i) Name the property owner as well as any person who is ordered to stop the activity;
- (ii) Describe the location and nature of the illegal activity observed and why it appears to be a violation of the development regulation (with specific citation to the regulation);
- (iii) Describe which activities must stop and the duration of the stop order;
- (iv) State the possible consequences of a failure to obey the order, including, as applicable:
- (A) Civil penalties (specify what those penalties will be),
- (B) A misdemeanor criminal citation,
- (C) A court complaint for injunctive relief or damages,
- (D) Abatement by the County,
- (E) Any other relief authorized by law.
- (v) Provide the name, address, email address and phone number of enforcement official and any person who should be contacted to discuss or resolve the stop activity order; and
- (vi) Describe the right to ask for a hearing before an administrative hearing officer, the deadline to request a hearing, and provide the appropriate forms.

- (3) Remediation Order. If a violation of a development regulation threatens the health, safety or welfare of the general public, and immediate action is necessary to remove an unsafe condition, an enforcement official may, issue a remediation order directing a person to
- (i) Repair, safeguard, or eliminate a dangerous structure or condition;
 - (ii) Clear debris, rubbish and refuse which is not subject to the provisions of Chapter 459 of NRS;
 - (iii) Clear weeds and noxious plant growth; or
 - (iv) Repair, clear, correct, safeguard or eliminate any other public nuisance as defined in this article.
- (4) The remediation order shall:
- (i) Name the property owner and any/or other person who is ordered to remediate the illegal activity;
 - (ii) Describe the location and nature of the violation of the development regulation (with specific citation to the regulation), explain that the condition is an unsafe condition requiring immediate remediation;
 - (iii) List and describe the corrective actions that need to be taken to remedy the unsafe condition;
 - (iv) Specify a date by which the respondent must abate the public nuisance.
 - (v) Specify the possible consequences of a failure to obey the order to include, as applicable,
 - (A) Abatement by the County;
 - (B) Civil penalties (specify what those penalties will be);
 - (C) A misdemeanor criminal citation;
 - (D) A court complaint for injunctive relief or damages;
 - (E) Any other relief authorized by law.
 - (vi) Provide the name, address, email address and phone number of enforcement official and any person who should be contacted to discuss or resolve the remediation order.
 - (vii) Describe the right to ask for a hearing before an administrative hearing officer, the deadline to request a hearing, and provide the appropriate forms.
- (5) Stop activity orders and remediation orders should be personally served on the person ordered to stop or remedy the violation. In addition, all stop activity and remediation orders shall be sent to the property owner by certified mail, return receipt requested, to the address indicated the assessor's records for the

property. The order is effective on the earlier date of personal service or service by mail. Each person who serves a stop activity order or remediation order shall prepare a sworn affidavit specifying the date, time, and nature of service.

- (6) Any person who has been named and served with a stop activity order and continues to do any activity in violation of the order, except activity that is directed or approved by the enforcement official is guilty of a misdemeanor, and each day or part of a day that the person continues to perform the activity is a separate offense. Any person who has been named in and served with a remediation order who unreasonably fails to perform the required remediation activity by the deadline indicated shall be guilty of a misdemeanor, and each day or part of a day that the person continues to fail to perform the activity shall be a separate offense.
 - (7) The stop activity order or remediation order may provide for the imposition and collection of civil penalties, and for the possibility of abatement as specified in Washoe County Code Chapter 125.
 - (8) Hearing Required; Appeals. Because of their injunctive nature, if any person who is served with a stop activity order or remediation order asks for a hearing, an administrative hearing officer will expeditiously be appointed and a hearing will be conducted within 30 days. A stop activity order remains in effect pending the hearing. The deadline for a remediation order is suspended pending the hearing. The hearing will be conducted in accordance with the provisions for hearings, and the issuance, enforcement and appeal of administrative orders as set out in Washoe County Code Chapter 125. The decision of the administrative hearing officer is appealable to the Board of Adjustment in accordance with this article, or may be taken directly to judicial review in accordance with Washoe County Code Chapter 125 at the option of the appellant. If appeal is made to the Board of Adjustment, the decision of the Board of Adjustment is subject to judicial review in accordance with this article.
 - (9) A stop activity order or remediation order may be rescinded by the enforcement official that issued it; by the Director of the Community Development Department, the Director of Community Services, the County Engineer or the Building Official; by an administrative hearing officer; and/or, by the Board of Adjustment.
 - (10) Enforcement. If a hearing is held before an administrative hearing officer as provided above, then the decision or order of the administrative hearing officer shall be enforced as provided in Washoe County Code Chapter 125. If a hearing is not held, the enforcement official may proceed to enforce the stop activity or remediation order through any of the administrative, civil or criminal remedies provided in this article.
- (d) Administrative Enforcement Proceedings. The enforcement official may construe the violation of any provision in a development regulation as an administrative offense and pursue all procedures and remedies in Washoe County Code Chapter 125, subject to the following provisions:
- (1) Appeal to Board of Adjustment. Any aggrieved person may appeal a decision or order of an administrative hearing officer to the Board of Adjustment in accordance with the Rules of the Board of Adjustment.

- (2) Grading Violations. If an enforcement official observes grading that is being done without a permit, in violation of a permit, or in violation of a development regulation, the enforcement official may proceed in an expedited manner as provided in Article 438, Grading Standards, of the Development Code.
- (e) Summary Abatement Proceedings without Advance Notice under Washoe County Code Section 125.210. If a determination is made under NRS 244.3601 (3) that a dangerous structure or condition exists and the dangerous structure or condition places any person's life, health or property in immediate or impending high risk of injury or damage, the enforcement official may pursue summary abatement proceedings as provided in Washoe County Code Sections 125.210 and 125.215 and NRS 244.3601 without advance notice. Except for the requirement of advance notice, the provisions of subparagraph (f) next below apply to these abatement proceedings.
- (f) Summary Abatement Proceedings with Notice of Abatement. For serious violations of a development regulation or serious "public nuisances" as defined in Washoe County Code Chapter 50 that are not remedied after the warning or civil penalty has been issued, the enforcement official may issue a notice of abatement and pursue abatement proceedings as provided in Washoe County Code Section 125.195 through 125.205 and NRS 244.360 through 244.3605 subject to the following provisions:
- (1) NRS 244.3601 shall apply to these summary proceedings.
- (2) An administrative hearing officer shall automatically be appointed and the cost report contemplated in Washoe County Code Section 125.205.3 shall be filed with the administrative hearing officer. The administrative hearing officer shall hold a hearing to take evidence and determine the amount of the assessment against the property and, if contested by the respondent, may take evidence and make a determination as to the condition of the structure, the need for the abatement proceeding (including statements from the three witnesses who determined the dangerous condition existed), and the need for and extent of abatement conducted. The record of the hearing shall be used as the basis for an appeal to the Board of Adjustment or for judicial review.
- (3) Appeal to Board of Adjustment. After an administrative hearing officer has issued a ruling on the cost report filed under Washoe County Code Section 125.205.3, any aggrieved person may appeal any decision by the administrative hearing officer to the Board of Adjustment as provided below. The Board of Adjustment may affirm, modify, or reverse the enforcement official's or administrative hearing officer's determination but may not award damages or other relief.
- (4) Judicial Review. As provided in NRS 244.3601, any decision of an administrative hearing officer or Board of Adjustment may be the subject of judicial review.
- (g) Judicial Abatement Proceedings. For serious violations of a development regulation or serious public nuisances under Washoe County Code Chapter 50 the enforcement official may apply to the District Attorney's office to pursue abatement proceedings under NRS 244.360 through 244.3605 as authorized in Washoe County Code Section 125.020, subject to the following provisions:
- (1) The decision to pursue judicial abatement is the District Attorney's and this remedy should only be used in circumstances needing immediate action where administrative proceedings would not be effective.

- (2) The District Attorney may require certain administrative proceedings in Washoe County Code Chapter 125 be completed before abatement litigation is brought.
 - (3) When the District Attorney files litigation, Nevada statutes and Rules of Civil Procedure govern the proceedings and there is no right to appeal to the Board of Adjustment.
- (h) Criminal Proceeding. The enforcement official may, in accordance with NRS 171.17751 prepare a citation and pursue criminal remedies as provided in NRS 171.1773, 171.1776, subject to the following provisions:
- (1) The District Attorney, in his/her sole prosecutorial discretion, must approve the use of this procedure before the citation is issued.
 - (2) The District Attorney will direct all proceedings and may require that certain administrative proceedings be completed before a citation is issued. Interpretations and decisions of the enforcement official during administrative proceedings are subject to appeal to the Board of Adjustment.
 - (3) Once a criminal citation is issued and is filed with the court, there no longer is a right to appeal any decision to the Board of Adjustment.
- (i) Appeals to the Board of Adjustment. Under NRS 278.310, an aggrieved person may appeal an interpretation or decision of an administrative hearing officer made in the course of the administration or enforcement of this article to the Board of Adjustment. The following provisions apply to this appeal process:
- (1) Notice. The administrative hearing officer's decision or order shall explain the right to appeal, the appeal procedure, and how to obtain forms.
 - (2) Forms and Deadline. Unless a different time for appeal is provided in this article or another code or regulation, the appellant shall have twenty (20) calendar days from the date of service of the administrative hearing officer's decision to file an appeal. The appeal shall be prepared on forms provided by and shall be turned in to the Community Development Department or Building Official as the case may be. If an appeal is not received by the Community Development Department or Building Official by the deadline, the right to appeal is deemed waived, and the administrative/civil/abatement/criminal proceeding may proceed.
 - (3) The burden to establish appellant as an aggrieved party is on the appellant, and the appellant must in his/her appeal request establish by affidavit the nature and location of his or her property interest and the manner in which the property interest will be affected by the decision being appealed. The Board of Adjustment shall first determine standing to bring the appeal, and may schedule a separate public hearing for that purpose.
 - (4) Hearing Procedures. The timelines and procedures set out herein and the rules of the Board of Adjustment govern the appeal, except that following the public hearing, the Board of Adjustment shall either affirm, modify, reverse or remand the decision being appealed or any combination thereof, but may not award damages. A written order shall be prepared, executed by the Board of Adjustment Chair, and filed with the secretary of the Board of Adjustment and a copy of the order shall be served on the appellant.

(5) Judicial Review of Board of Adjustment Decisions. The appellant shall have twenty-five (25) days from the later of:

- (i) Filing of the order with the secretary of the Board of Adjustment, or
- (ii) The date the order is mailed to the appellant.

When a petition for judicial review is filed, the court rules shall govern the proceeding. This judicial review is in lieu of appeal to the Board as authorized by NRS 278.310 (3)(b).

SECTION 5. Section 110.910.20 of Washoe County Code is hereby repealed.

SECTION 6. Section 110.910.25 of Washoe County Code is hereby repealed.

SECTION 7. Section 110.910.30 of Washoe County Code is hereby repealed.

SECTION 8. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. This ordinance shall be in effect from and after its publication as hereinafter provided, and after this ordinance is signed by the Chairman of the Board and attested and sealed by the County Clerk, this ordinance shall be published by title only, together with the names of the Commissioners voting for or against and with a statement that typewritten copies of said ordinance are available for inspection by all interested parties at the office of the County Clerk, such publication to be made in

the Reno Gazette Journal, a newspaper published and having general circulation in the County, at least once a week for a period of two weeks by two insertions as required by NRS 244.100 and any other enabling laws.

5. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

Passage and Effective Date

This ordinance was proposed on 9-25-12 by Commissioner Larkin.

This ordinance was passed on 10-23-12.

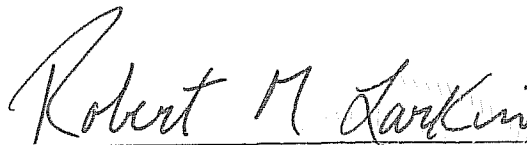
Those voting "aye" were Larkin, Weber, Brotschitz.

Those voting "nay" were none.

Those absent were Tung, Humke.

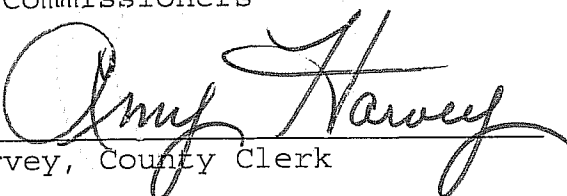
Those abstaining were none.

This ordinance shall be in force and effect immediately upon the date of the second publication of such ordinance as required by NRS 244.100.



Robert M. Larkin, Chairman of the Board of County Commissioners

ATTEST:


Amy Harvey, County Clerk

WASHOE COUNTY
REGISTRAR
2012 NOV -5 AM 11:34

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Reno Gazette-Journal**

**955 Kuenzli St • P.O. Box 22,000 • Reno, NV 89520 • 775.788.6200
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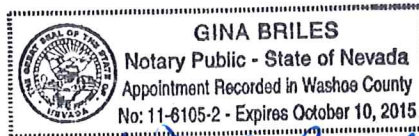
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Ad# 1000789947
Legal Ad Cost \$276.00

STATE OF NEVADA
COUNTY OF WASHOE

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **10/26/2012 - 11/02/2012**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: *K Kenston*



NOV 02 2012

D. Briles

Proof of Publication

NOTICE OF ADOPTION WASHOE COUNTY ORDINANCE NO. 1501 BILL NO. 1682 An Ordinance amending Article 910 (Enforcement) of the Washoe County Development Code (Washoe County Code Chapter 110) to authorize and establish procedures for the use of administrative and civil court proceedings available under Washoe County Code Chapter 125 to enforce development regulations (including the development code, building codes, and permits, maps, orders and development agreements issued under them) including the possible use of stop work orders, remediation orders, administrative proceedings (including the use of warnings, civil penalties and hearings before administrative hearing officers), summary and judicial abatement proceedings, civil court actions, and revocation of permits and development agreements in addition to the criminal and civil remedies already available under the present development code. The Ordinance also establishes requirements and procedures for aggrieved persons to appeal zoning and building code decisions of enforcement officials and administrative hearing officers to the Board of Adjustment, and the judicial review of the decisions of the Board of Adjustment. Recommendations include other matters properly related to enforcement of the Development Code. (Bill No. 1682) NOTICE IS HEREBY GIVEN that typewritten copies of the above-numbered and entitled ordinance are available for inspection by the interested parties at the

office of the County Clerk of Washoe County, Nevada, at her office in the Washoe County Complex, 1001 E. Ninth Street, Building A, Reno, Washoe County, Nevada; and that the ordinance was proposed on September 25, 2012 by Commissioner Larkin and was passed and adopted without amendment at a regular meeting held on October 23, 2012 by the following vote of the Board of County Commissioners: Those Voting Aye: Bonnie Weber Robert Larkin John Breternitz Those Voting Nay: None Those Absent: David Humke and Kitty Jung This ordinance shall be in full force and effect after the date of the second publication of such ordinance by its title only on November 2, 2012. IN WITNESS WHEREOF, the Board of County Commissioners of Washoe County, Nevada, has caused this ordinance to be published by title only. DATED: October 24, 2012. AMY HARVEY, Washoe County Clerk and Clerk of the Board of County Commissioners No. 789947 Oct 26, Nov 2, 2012