

Memorandum

To: City Manager Mark Mitchell
From: City Attorney Bill McCaffree
Subject: Is Code Section 2-12 retroactive or prospective
Date: May 28, 2020.

1. You inquire whether the term limit imposed by Section 2-12 of the Code of the City of Nevada addressing appointment to the Hospital Board, is retroactive or prospective.

2. Statutes and Ordinances are generally presumed to be substantive in nature and prospective only, unless (1) an opposite intent is stated, or (2) the statute or ordinance is clearly procedural rather than substantive. It can be argued this ordinance is procedural and retroactive – it controls the Mayor’s ability to appoint, but there is respected authority term limit legislation is substantive and prospective - because a United States Supreme Court “term limit” decision (Term limits, Inc. v. Thornton, 514 US 779, 115 S.C. 1842, 1995) ruled that a number of state term limit statutes provided qualifications or absence thereof – i.e. substantive legislation. In Missouri, to clarify as to state reps and senators the amendment to Article III, Section 8, of the Missouri Constitution specified that - prior service is not to be counted. No such clarification appears in our present ordinance.

3. Because of the Thornton decision, I think ‘prospective’ is the most likely interpretation but to avoid guessing and risking proper appointments suggest the council clarify. Attached is an ordinance which would clarify. If the council wishes to change the 4 year appointment cap (prospectively) it could do so.

Very truly yours,

Wm. G. McCaffree

WGM/ams

BILL NO. 2020-050

ORDINANCE NO.

A GENERAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, AMENDING SECTION 2-12 OF THE CODE OF THE CITY OF NEVADA, MISSOURI.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI THAT:

Section 1. Section 2-12 of the Code of the City of Nevada, Missouri is hereby amended by addition of the following sentence:

In applying this section appointment(s) prior to November 21, 2017, shall not be counted – the ordinance is to be interpreted in a prospective manner only.

Section 2. This ordinance will be in full force and effect upon its adoption and approval.

PASSED, APPROVED and ADOPTED by the City Council of the City of Nevada, Missouri, this ____ day of _____, 2020.

CITY OF NEVADA, MISSOURI

(SEAL)

By: _____
George Knox, Mayor

Attest:

Johnna Williams, Acting City Clerk