

DETROIT CHARTER REVISION COMMISSION
PROPOSAL/ISSUE REVIEW SUMMARY

ISSUE NUMBER: GOS 49

ISSUE CATEGORY: Government Operations & Structure

SOURCE: City Council,

RELATED CHARTER SECTIONS: Sec. 2-107. (Dismissal Proceedings)

Letter dated December 2, 2010

RELEVANT ORDINANCE SECTION:

RELEVANT LAW(S):

ISSUE/PROPOSAL STATEMENT: Adds additional ground for forfeiture to include "official misconduct, malfeasance or misfeasance in office, or willful neglect of the duties of office," and pleading guilty to a felony while in office or appointment. Requires 2/3 vote of council members serving to approve forfeiture. Makes explicit extension of due process, public review and standard of review (de novo). Allows Council to retain a legal advisor to advise and assist with forfeiture hearing. Adds additional grounds for removal of appointees to include "pleading guilty to a felony," and redefines/clarifies their removal for "habitual unexcused non-attendance" at meetings. Adds method for determining whether non-attendance is unexcused.

Sec. 2-107. Dismissal proceedings.

1. Recall.

Any elective officer provided for in this Charter may be recalled by voters of the city in the manner provided by law.

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2. Forfeiture.

The position of an elective city officer or an appointee shall be forfeited if he or she:

A. Lacks at any time any qualifications required by law or this Charter;

B. ~~Commits acts of official misconduct, malfeasance or misfeasance in office, or willful neglect of the duties of office;~~ or

Deleted: Violates any provision of this Charter punishable by forfeiture

C. Is convicted of ~~or pleads guilty to~~ a felony while holding the office or appointment.

The city council shall be the judge of the grounds of forfeiture of an elective officer or an appointee, ~~by two-thirds (2/3) vote of the city council members serving.~~ A city council member charged with conduct constituting grounds for forfeiture may not participate in the resolution of the charge.

A person charged with conduct constituting grounds for forfeiture is entitled to ~~due process, and upon timely request, to a public hearing before the city council. In the case of an officer or appointee subject to forfeiture pursuant to section 2 (c) no hearing before city council shall be required.~~ Notice of ~~forfeiture proceedings and of the hearing, if requested,~~ shall be published in ~~the manner required by law for open meetings of the city council.~~ Decisions made by the city council under this section are subject to judicial review in a ~~de novo~~ hearing. ~~The city council shall retain an independent professional legal advisor to assist it regarding the interpretation, application and enforcement of the rules for the hearing, admissibility of evidence, objections, motions and other legal issues arising in connection with the proceedings.~~

Deleted: one (1) or more daily newspapers of general circulation in the city at least one (1) week in advance of the hearing.

Deleted: de novo

3. Removal for cause.

Any appointee subject to removal for cause may be removed by the appointing authority for lack of qualifications, incompetence, neglect of duties, misconduct, conviction of a felony, pleading guilty to a felony, habitual unexcused non-attendance at meetings where the appointee's presence is required for the discharge of the duties of the position, or a violation of this Charter or any ordinance, rule or regulation. The appointing authority and applicable law will determine whether non-attendance is unexcused.

✓ An appointee may not be removed under this subsection without an opportunity for a public hearing before the appointing authority. A copy of the charges shall be furnished at least ten (10) days in advance of the hearing.

Deleted: In the case of a person appointed to a multi-member body and subject to removal for cause, cause includes "habitual non-attendance" at the meetings of the body as defined in its rules. ¶

RATIONALE: "Due to recent events, changes have been made to subpart 2(b) to clarify what acts will trigger the forfeiture of a position. Additionally, pleading guilty to a felony will also trigger the forfeiture of a position." – *City Council Recommendations dated November 19, 2010.*

"The need to revise this section of the current charter became clear during the previous administration, and in fact, motivated City Council to place the charter revision question on the ballot. In particular, the Wayne County Circuit Court ruled that although the section outlining forfeiture proceedings appeared in the charter, there were no specific provisions triggering forfeiture in the event of a violation, as required by section 2-107(2)(b). That defect has been remedied by the proposed language by importing the standard set forth in the state statute (MCL 168.327). The intent is to allow city government officials to deal with official misconduct, if necessary, without relying on outside authorities. A two-thirds majority vote requirement has been added to ensure that a bare majority of City Council cannot act without sufficient cause to persuade a super-majority.

"Other minor changes are proposed to streamline the application of this section. *Pleading guilty* to a felony will also trigger the forfeiture of a position (prior to sentencing), and no trial before City Council is required in the event of a conviction or a guilty plea, as the official will have already received due process. The need for the explicit addition of the guilty plea arose during the last city council term, when a member entered such a plea in court, but had not been sentenced and therefore retained the right to withdraw the plea.

"The requirement of an independent legal advisor to assist City Council with necessary legal rulings in the course of a forfeiture proceeding - such as making evidentiary rulings - is deemed to facilitate proceedings pursuant to law and due process, rather than risking arbitrary political action. Finally, the grounds for removing an appointee for cause have been consolidated, with emphasis on the appointing authority's power to define whether or not absence is unexcused for such purposes."-*City Council's Rationale, Letter dated December 13, 2010.*

ANALYSIS:

DISPOSITION/COMMISSION ACTION:

NOTES: