

DETROIT CHARTER REVISION COMMISSION
PROPOSAL/ISSUE REVIEW SUMMARY

ISSUE NUMBER: GOS 195

ISSUE CATEGORY: Government Operations & Structure

SOURCE: Mayor Bing Administration

RELATED CHARTER SECTIONS: §2-107 (Dismissal Proceedings)

Letter, dated December 20, 2010

RELEVANT ORDINANCE SECTION:

RELEVANT LAW(S): MCL 117.4i(6); City of Detroit and Mayor Kwame

M. Kilpatrick v Detroit City Council, Wayne County Circuit Case No.

08-115-445-CZ

ISSUE/PROPOSAL STATEMENT: Clarification of City Council's in the forfeiture of offices held by elective City officers, grounds for forfeiture, procedure for forfeiture, role of the appointing authority concerning removal of an appointee, grounds for removal and removal procedure.

Sec. 2-107. Dismissal proceedings.

~~1. Recall. Any elective officer provided for in this Charter may be recalled by the voters of the city in the manner provided by law.~~

~~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. Violates any provision of this Charter punishable by forfeiture; or~~

~~C. Is convicted of 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. 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 a public hearing before the city council. Notice of the hearing shall be published in one (1) or more daily newspapers of general circulation in the city at least~~

~~one (1) week in advance of the hearing. Decisions made by the city council under this section are subject to judicial review in a hearing 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, or a violation of this Charter or any City ordinance, rule or regulation.~~

~~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.~~

~~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.~~

A. Recall of Elective City Officers.

Any of the eleven (11) elective City officers provided for in Section 3-105 of this Charter may be recalled by the voters of the City in the manner provided for by Michigan Election Law.

B. Forfeiture of Office Held by Elective City Officers.

1. Grounds for Mandatory Forfeiture.

The office of an elective City officer shall be forfeited where the officer:

- a. Lacks at any time any qualifications required by law or by Section 2-101 of this Charter; or
- b. Is convicted of a felony while holding the office or appointment.

2. Grounds for Permissive Forfeiture.

The City Council may determine that the office of an elective City officer should be forfeited where the officer:

- a. Is determined by a three-fourths (3/4) vote of Council Members serving to have violated the Detroit Ethics Ordinance after either referral from the Detroit Board of Ethics or investigation of Council; or
- b. Violates any provision of this Charter punishable by forfeiture.

3. Procedure

Where the City Council determines that forfeiture under Subsection (b)(1) of this section, or under Subsection (b)(2) of this section, or both, is proper, the officer shall be charged through adoption of a resolution, which provides the factual basis for each charge, by a two-thirds (2/3) vote of members serving. Upon adoption of the resolution, the City Clerk shall forward a certified copy of the resolution to the officer by registered mail.

An elective City officer charged with conduct constituting grounds for forfeiture is entitled to a public hearing before the City Council and to outside legal representation, as permitted by law, which shall be paid by the City of Detroit at rates commensurate with the hourly rate normally paid by the City. A City Council member charged with conduct constituting grounds for forfeiture may not participate in the resolution of the charge.

Notice of the hearing and the charging resolution shall be published in a daily newspaper of general circulation in the City, or by electronic posting available to the public, at least fourteen (14) days in advance of the hearing. A decision by the City Council for forfeiture of the office of an elective City officer is subject to judicial review in accordance with Michigan law.

4. Hearing Rules.

In accordance with Section 2-111 of this Charter, the City Council shall promulgate rules for the Body's forfeiture hearings. Such rules shall comport with procedural due process and shall be in effect prior to any resolution charging the elective City officer.

C. Removal of City Appointees.

1. Grounds.

A City appointee who serves at the pleasure of his or her appointing authority may be removed by the appointing authority without cause. A City appointee who is subject to removal for cause may be removed by the appointing authority for:

- a. Lack of qualifications;
- b. Incompetence;
- c. Neglect of duties;
- d. Misconduct;
- e. Conviction of a felony;
- f. Violation of this Charter;
- g. Violation of federal or state law; or

- h. Violation of any City ordinance, rule, or regulation.

In addition, where a person is appointed to a multi-member body, the appointee is subject to removal for cause for habitual non-attendance of meetings as defined in the Body's rules, or as established by review of the minutes from the Body's meetings.

2. Procedure.

A City appointee who is removable for cause may not be removed under this subsection without an opportunity for a hearing before the appointing authority. A copy of the charges shall be furnished at least fourteen (14) days in advance of the hearing.

3. Hearing Rules.

In accordance with Section 2-111 of this Charter, each appointing authority shall promulgate procedural rules for removal hearings. Such rules shall comport with procedural due process and shall be in effect prior to any notice or resolution charging the City appointee.

RATIONALE: *"MCL 117.4i(6) authorizes the adoption of Charter provisions concerning voter recall of city elective officers. During City Council's attempt to remove former Mayor Kwame M. Kilpatrick from the Office of Mayor, a dispute arose as to whether the Body had the authority under Section 2-107 to cause the Mayor to forfeit his office. In City of Detroit and Mayor Kwame M. Kilpatrick v Detroit City Council, Wayne County Circuit Case No. 08-115-445-CZ, the Hon. Robert L. Ziolkowski held that no such authority was available under Section 2-107. The proposed changes in this section will clarify the role of the City Council concerning forfeiture of offices held by elective City officers, the grounds for forfeiture, and the procedure for forfeiture. In addition, the proposed changes will clarify the role of the appointing authority concerning removal of an appointee, the grounds for removal, and the procedure for removal."*-Bing Administration, Letter, dated December 20, 2010.

ANALYSIS:

DISPOSITION/COMMISSION ACTION:

NOTES: