

## SPECIAL MEETING REMOVAL HEARING PROCEDURE - DRAFT

**Why:** The purpose is to determine whether to remove an Alder for **cause**<sup>i</sup> pursuant to [Wis. Stat. 17](#). If the Alder resigns before the hearing, then the hearing is not needed. If the Council votes in favor of removal, the Alder cannot file to fill the **vacancy**<sup>ii</sup> created by the removal. However, the removed Alder may run for the next term.

### Hearing Pre-Requisites:

1. Hearings are initiated by written, **verified charges (signed affidavit)**<sup>iii</sup> brought by a resident taxpayer of the City of Madison against an Alder.
2. The complaint is filed with the City Clerk.
3. A hearing is required if verified charges are filed<sup>iv</sup>.
4. A resolution to schedule a hearing may contain the following provisions and requires a majority vote:<sup>v</sup>
  - a. Date of the hearing, including additional dates if required.
  - b. Authorization to hire a **stenographer**<sup>vi</sup> to transcribe the proceedings.
  - c. Authorization to hire a hearing examiner to preside over the Special Meeting. The City Attorney may assist the hearing examiner.
  - d. Specify whether the complainant is required to execute a **bond of \$1,000**<sup>vii</sup> as security towards payment for hearing costs if ordered.
  - e. Fiscal Note with cost estimates and budget source.
5. Collect the \$1,000 bond if required by the hearing resolution.
6. A copy of the charges and written notice of the time and place for the hearing is given to the Alder-respondent by delivery in person or by mail at least 20 days before **the hearing**.<sup>viii</sup>
7. The Alder-respondent may file a verified answer (signed affidavit) within **10 days**<sup>ix</sup> of service of the complaint.

### Hearing Proceedings Order:

The Council Chambers or other hearing room shall be arranged to provide a table for the Complainant and a table for the Alder-respondent and their respective attorneys in the first row facing the hearing examiner. Members of the Council shall be seated behind the parties during the hearing. Following the hearing, alders shall be seated in their regular seating arrangement during deliberations and voting on any motions.

The Hearing Examiner will conduct the **hearing**<sup>x</sup> as follows:

#### A. Complainant

1. The hearing examiner or stenographer swears in the Complainant.
2. Complainant or their attorney presents their case first.
3. The burden of proof falls on the Complainant.
4. Complainant can call witnesses to testify who are sworn in by the hearing examiner or stenographer.
5. Complainant may submit exhibits or evidence to the hearing examiner which may be viewed by other alders upon request of an alder at the conclusion of the hearing.
6. The Alder-respondent or their lawyer may ask the complainant and witnesses questions during cross-examination.
7. At the conclusion of testimony of each witness, other alders may pass any questions on to the hearing examiner to be posed to the witness. The hearing examiner may combine and rephrase submitted questions for clarity and to avoid repetition.

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### B. Alder-Respondent

1. The hearing examiner or stenographer swears in the Alder-respondent.
2. The Alder-respondent or their attorney presents their case<sup>xi</sup>.
3. The Alder-respondent can call witnesses to testify who are sworn in by the hearing examiner or stenographer.
4. The Alder-respondent may submit exhibits or evidence to the hearing examiner which may be viewed by other alders upon request of an alder at the conclusion of the hearing.
5. At the conclusion of testimony of each witness, other alders may pass any questions on to the hearing examiner to be posed to the witness. The hearing examiner may combine and rephrase submitted questions for clarity and to avoid repetition.

### C. All Witnesses: No person may be excused from testifying because the testimony may incriminate them but no person who testifies may be prosecuted for or on account of testifying except for perjury.<sup>xii</sup>

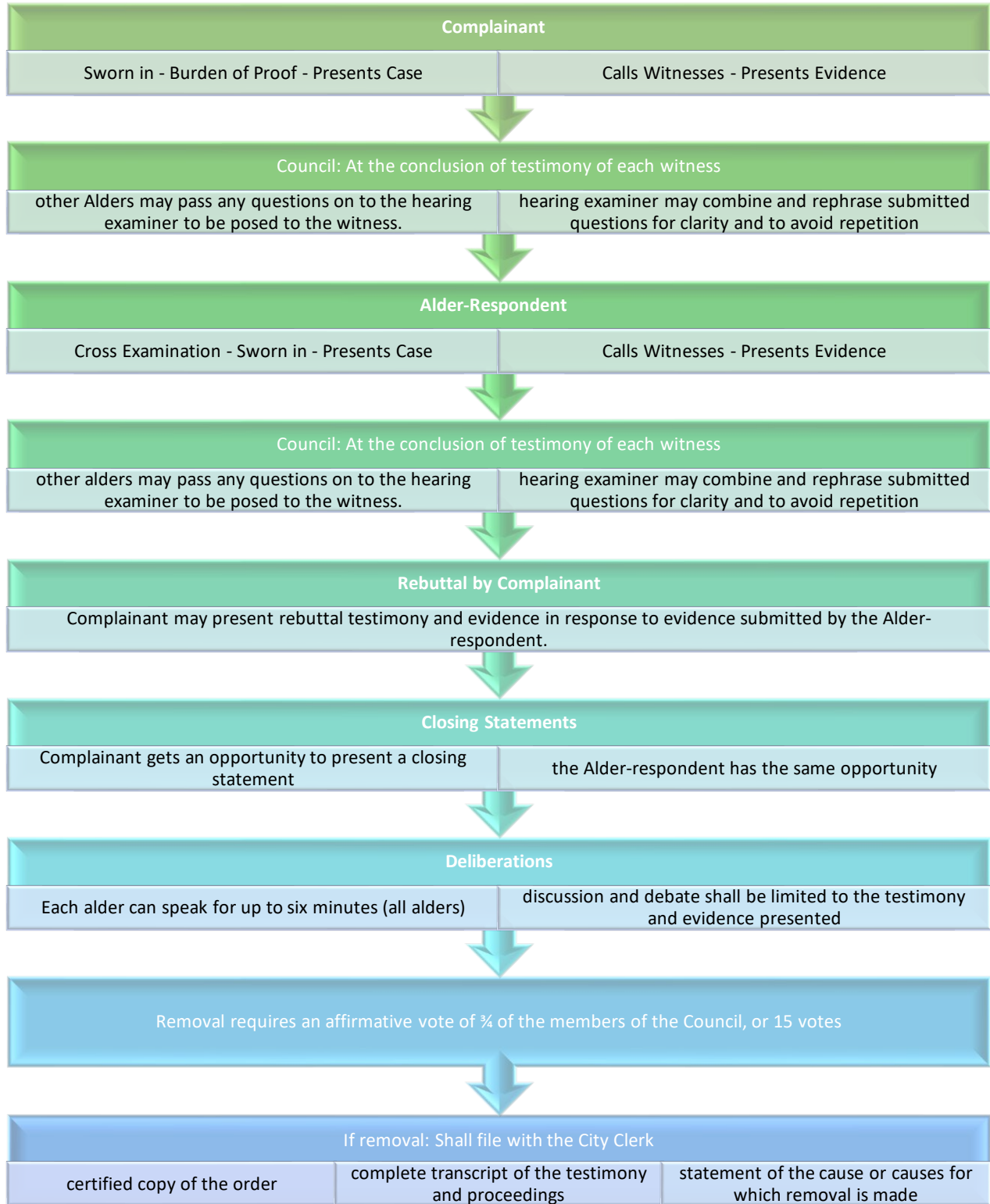
### D. Rebuttal by Complainant: The Complainant may present rebuttal testimony and evidence in response to evidence submitted by the Alder-respondent pursuant to the steps outlined in section A above.

### E. Closing Statements and Deliberations: The hearing examiner will first allow the Complainant an opportunity to present a closing statement and then will allow the Alder-respondent the same opportunity. After the hearing closes, the Council may take a recess to allow alders to consider the evidence and organize their thoughts. Deliberations will be conducted as follows:

1. The hearing examiner will recognize alders to speak on the question of removal **in the order they enter the queue (in the room/on Zoom)**.
2. Each Alder may speak once for up to six minutes on the question of removal. Discussion and debate shall be limited to the testimony and evidence presented at the hearing.
3. Following the close of discussion, a member of the Council may make a motion for removal, including the cause or causes for which removal is made. The hearing examiner shall **conduct a roll call vote** on such motion in sequential order by District number, **starting with District 1**. The Alder-respondent is permitted to vote and if the Complainant is also an alder, that alder is also permitted to vote.
4. Removal requires an **affirmative vote of ¾ of the members of the Council, or 15 votes.**<sup>xiii</sup> If the motion to remove passes, the Alder-respondent immediately ceases serving as an alder.
5. Following the vote regarding removal, the **Council shall determine whether the complaint was willful and malicious and without probable cause and if it so finds, all expenses incurred by the Council in conducting the hearing shall be paid by the Complainant, pursuant to Wis. Stat. s. 17.19(9)**<sup>xiv</sup>.
6. In the case of removal, a certified copy of the order, a complete transcript of the testimony and proceedings and a statement of the cause or causes for which removal is made shall be **filed with the City Clerk.**<sup>xv</sup>

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### Hearing Process Steps:



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### Glossary:

1. Cause
2. Probable Cause
3. Removing Power
4. Verified charges
5. Hearing examiner

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<sup>i</sup> **17.001** Definition. In this chapter, unless qualified, “cause” means inefficiency, neglect of duty, official misconduct, or malfeasance in office.

<sup>ii</sup> **17.16(10)** A person lawfully removed from office shall be ineligible to appointment or election to fill the vacancy caused by such removal.

<sup>iii</sup> **17.16(3)** Removals from office for cause under this chapter, except as provided in s. 17.14, shall be made as provided in this section, and may be made only upon written verified charges brought by a resident taxpayer of the governmental unit of which the person against whom the charges are filed is an officer, and after a speedy public hearing at which the officer shall have full opportunity to be heard to present a defense against the charges, personally and by counsel

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<sup>v</sup> **17.16 (3)** The removing power, and in case such power consists of more than one person, each such person is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence and may make and enforce such orders and rules as are necessary to properly conduct such hearing and may appoint and fix the compensation of a stenographer to take testimony thereat.

<sup>vi</sup> **17.16(5)** The removing power, and in case such power consists of more than one person, each such person is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence and may make and enforce such orders and rules as are necessary to properly conduct such hearing and may appoint and fix the compensation of a stenographer to take testimony thereat.

<sup>vii</sup> **17.16(4)** The removing power may, before acting upon any charges preferred against any officer, require the person preferring the same to execute and deliver to such power a bond in the sum of \$1,000 with one or more sureties to be approved by such power, conditioned for the payment of all costs and expenses actually incurred by the state, county or other unit of which the person charged is an officer and by the removing power in the hearing and investigation of such charges.

<sup>viii</sup> **17.16(3)** A copy of the charges and written notice of the time and place for the hearing shall be given the officer by the removing power by delivery to the officer in person or by mailing the same to the officer at the officer’s last and usual post-office address not less than 10 days prior to the hearing.

<sup>ix</sup> **17.16(3)** The officer may within 10 days from service of the charges file with the removing power a verified answer thereto.

<sup>x</sup> **17.16(3)** ... after a speedy public hearing at which the officer shall have full opportunity to be heard to present a defense against the charges, personally and by counsel

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<sup>xi</sup> **17.16(3)** . . after a speedy public hearing at which the officer shall have full opportunity to be heard to present a defense against the charges, personally and by counsel

<sup>xii</sup> **17.16(7)(a)** No person may be excused from testifying or from producing evidence on the hearing for the reason that the testimony, documentary or otherwise, required of him or her may tend to incriminate him or her, but no person so testifying may be prosecuted for or on account of testifying or producing any documentary evidence, except for perjury committed in giving the testimony.

<sup>xiii</sup> **17.12(1)(d)** *Votes required.* Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of 3 or more members, by an affirmative vote of two-thirds of all the members thereof.

<sup>xiv</sup><sup>xiv</sup> **17.16(9)** In case of procedure for removals by other officers or bodies, the expenses thereof shall be paid by the unit of government of which the person against whom charges are preferred was an officer. But if the removing power finds that the complaint was willful and malicious and without probable cause all such expenses shall be paid by the person who preferred the charges and may be collected in an action against the person or on the bond furnished by the person.

<sup>xv</sup> **17.16(8)(b)** Removals from office for cause shall be by order, a certified copy of which, together with a complete transcript of the testimony and proceedings at the hearing and a statement of the cause or causes for which removal is made, shall be filed by the removing power as follows: **(b)** In the case of other officers, in the office of the clerk of the unit of which the person removed was an officer.