



Legislation Text

File #: 87288, Version: 1

**Fiscal Note**

No City appropriation required.

**Title**

Creating Section 2.37 of the Madison General Ordinances Related to Removal Hearings to Prescribe Hearing Procedures to Consider Removal of Alders from the Common Council.

**Body**

DRAFTER'S ANALYSIS: This ordinance establishes hearing procedures when a complaint is filed seeking removal of an alder from the Common Council. This ordinance establishes a more detailed process consistent with the statute to ensure due process for both the complainant and the alder who is the subject of the complaint, and to enable an orderly hearing process.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 2.37 entitled "Removal Hearings" of the Madison General Ordinances is created as follows:

**"2.37 REMOVAL HEARINGS.**

- (1) Purpose. The purpose of this section is to effectuate the requirements of Wis. Stat. s. 17.16 which establishes basic requirements regarding complaints seeking the removal of an alder from the Common Council. The intent of this section is to ensure order and consistency in the process, provide due process for the complainant and the alder who is the subject of the complaint, and implement more detailed procedures so that the Common Council is prepared to process a complaint for the removal of an alder.
- (2) Pursuant to Wis. Stat. s. 17.12(1), an alder may be removed by the Common Council for cause. "Cause" shall be as defined in Wis. Stat. s. 17.001.
- (3) Complaints requesting the removal of an alder shall be processed in the manner prescribed by this section. The Common Council may modify or supersede any steps in the processes established by this section only with an affirmative vote of two-thirds (2/3) of the members of the Council except that any such alterations may not conflict with Wisconsin Statutes. Any such alterations related to the conduct of a hearing shall also ensure the due process rights of both the complainant and the alder who is the subject of the complaint, as determined by the hearing examiner.
- (4) Hearing Prerequisites.
  - (a) A resident taxpayer of the City of Madison may file a complaint containing written verified charges alleging that there is cause to remove an alder from the Common Council. The written verified charges shall be signed by the complainant and notarized, and shall be filed with the City Clerk.
  - (b) The City Clerk shall transmit the complaint to the alder-respondent, the Mayor, the Common Council President and Vice President, and the Office of the Common Council by personal delivery, mail or electronic mail. The Clerk shall include the complaint in the Communications section of the agenda for one of the two succeeding Common Council meetings following receipt of the complaint. The Council shall consider the complaint pursuant to subsection (4)(c) or refer it to a future meeting within 30 days but shall not refer the complaint to another City

board, commission or committee.

- (c) The Common Council shall determine, by a majority vote of all members of the Council, whether the actions alleged in the complaint, if true, would state a claim for removal of an alder under the statutes. If the Council determines the allegations in the complaint, if true, do not state a claim for removal of an alder under the statutes, the complaint shall be dismissed, and the City Clerk shall so notify the complainant and the alder-respondent. If the Council determines the allegations in the complaint, if true, state a claim for removal, the City Attorney shall prepare and introduce an authorizing resolution as described in subsection (4)(d) and the Council shall conduct a hearing on the complaint.
  - (d) The authorizing resolution shall include the following:
    - 1. Date(s), time and place of the hearing.
    - 2. Authorization to hire a hearing examiner to preside over the hearing.
    - 3. Authorization to hire a stenographer to transcribe the hearing proceedings.
    - 4. Determination as to whether the complainant shall be required to execute a bond of \$1,000 as permitted in Wis. Stat. s. 17.16.
    - 5. Any directive to the hearing examiner to issue subpoenas for the attendance of witnesses and the production of evidence.
    - 6. Fiscal Note prepared by the Finance Department estimating the cost of a hearing and identifying the budget source for such costs.
  - (e) Following passage of the authorizing resolution, the City Attorney shall transmit a copy of the complaint and written notice of the time and place of the hearing to the alder-respondent by delivery in person or by certified mail at least 20 days before the date of the hearing. The City Attorney shall also provide written notice of the time and place of the hearing to the complainant. If the authorizing resolution requires the complainant's execution of a bond, the City Attorney shall so advise the complainant. Any such bond shall be submitted to the City Attorney at least five (5) business days before the date of the hearing. If a required bond is not timely submitted, no hearing shall be held and the complaint shall be deemed dismissed without further action of the Common Council and the City Attorney shall notify the parties and the Council of such dismissal.
  - (f) The alder-respondent may file a verified answer, signed and notarized, with the City Clerk, within ten (10) days of service of the complaint.
  - (g) The City Attorney shall facilitate hiring of the hearing examiner and stenographer and shall assist the hearing examiner in coordination of hearing tasks and communications to City staff and officials regarding the hearing. The hearing examiner or City Attorney shall transmit copies of the complaint, verified answer and any submitted evidence to members of the Common Council prior to the hearing.
- (5) Hearing Procedures.
- (a) Under the direction of the hearing examiner, the City Clerk shall arrange the hearing room to include tables for the complainant and the alder-respondent and their respective legal counsel, if any, facing the hearing examiner. Members or the Common 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 Council President shall call the meeting to order and after the roll call, shall turn over conduct of the hearing to the hearing examiner. The hearing examiner shall rule on any procedural or evidentiary questions. The City Attorney shall assist the hearing examiner in any manner requested by the hearing examiner during the hearing. The hearing examiner or stenographer shall swear in all witnesses.

- (b) The complainant shall bear the burden of proof by a preponderance of the evidence (that is, more likely than not). The complainant or their attorney may call witnesses to testify and submit exhibits and evidence which may be viewed by members of the Common Council upon request of an alder at the conclusion of the hearing. The alder-respondent or their lawyer may ask questions of witnesses. At the conclusion of the testimony of each witness, members of the Common Council may submit questions to the hearing examiner who shall pose such questions to the witness. The hearing examiner may rephrase or combine submitted questions for clarity and to avoid repetition.
  - (c) Following all testimony and evidence submitted by the complainant, the alder-respondent or their attorney may call witnesses to testify and submit exhibits and evidence which may be viewed by members of the Common Council upon request of an alder at the conclusion of the hearing. The complainant or their lawyer may ask questions of witnesses. At the conclusion of the testimony of each witness, members of the Common Council may submit questions to the hearing examiner who shall pose such questions to the witness. The hearing examiner may rephrase or combine submitted questions for clarity and to avoid repetition.
  - (d) Following all testimony and evidence submitted by the alder-respondent, the complainant or their attorney may present rebuttal testimony and evidence in response to evidence presented by the alder-respondent, using the process outlined in subsection (5)(b) above.
  - (e) Pursuant to Wis. Stat. s. 17.16(7), 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 them may tend to incriminate them, 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. This immunity is subject to the restrictions under Wis. Stat. s. 972.085.
  - (f) Upon the conclusion of all testimony and evidence being presented, the hearing examiner shall allow the complainant an opportunity to present a closing statement and then will allow the alder-Respondent the same opportunity.
- (6) Deliberations.
- (a) Following closing statements, the hearing examiner shall close the hearing. The Council may recess to allow alders to individually consider the evidence and arguments without discussion among alders. Following any such recess, deliberations shall occur and shall not be postponed to a future date.
  - (b) The hearing examiner shall recognize alders to speak on the question of removal in the order they enter the queue. Each alder may speak once for up to six minutes on the question and removal. Discussion and debate shall be limited to the testimony and evidence presented at the hearing and the standards for removal. The hearing examiner may explain the legal standards related to removal and review the required process, and shall rule on any questions of whether statements made in deliberations are in order.
  - (c) Upon the conclusion of discussion, a member of the Common Council may make a motion for removal of the alder-respondent, including the cause or causes for which removal is warranted. Such motion requires a second and an affirmative vote of all members of the Council. The hearing examiner shall conduct a roll call vote in sequential order by District number starting with the alder of District 1. The alder-respondent shall be permitted to vote and if the complainant is also an alder, the complainant shall be permitted vote.
  - (d) Removal requires an affirmative vote of three-quarters (3/4) of the members of the Common Council. The Mayor shall not vote. If the motion for removal is approved, the alder-respondent shall immediately cease serving as an alder.
  - (e) If the motion for removal is not adopted, or if no motion is made and seconded, the Common Council may determine, by a majority vote of all its members, whether the complaint was willful and malicious and without probable cause. If it so finds, all such expenses of the City in

conducting the hearing shall be paid by the complainant and may be collected in an action against the person or on the bond furnished by the person. Otherwise, all such costs shall be borne by the City.

- (f) Following the conclusion of the hearing and all related motions, the Council President shall entertain a motion to adjourn.
- (g) If the Common Council adopts a motion for removal, the hearing examiner shall prepare a written order, including a statement of the cause or causes for which removal was made, and deliver it personally or by mail or electronic mail, to the complainant and the alder-respondent. The hearing examiner shall submit a certified copy of the order with the City Clerk, along with a complete transcript of the testimony and proceedings at the hearing. The City Clerk shall transmit a copy of the order to the Mayor, members of the Common Council, City Attorney, and Common Council Office.”

**EDITOR’S NOTE:**

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