

## **RESOLUTION NO. 2011-22**

A **RESOLUTION** of the City Council of Bainbridge Island, Washington, adopting a process to handle a petition seeking the removal of a commissioner from one of the City's independent commissions.

**WHEREAS**, the City has, in BIMC Chapter 2.28, adopted a civil service system based on RCW Chapter 41.12;

**WHEREAS**, under state law, members of the Civil Service Commission may be removed from office only for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause; and

**WHEREAS**, state law also provides that no member of the commission shall be removed until charges have been preferred, in writing, and due notice and a full hearing had; and

**WHEREAS**, the City has two other independent commissions, the Salary Commission and the Planning Commission, whose members also may only be removed for good cause; and

**WHEREAS**, state law does not specify, and the City has not adopted, a process to handle a petition seeking the removal of the member of an independent City commission; and

**WHEREAS**, the City Council intends to adopt a process to handle a petition seeking the removal of a commissioner from any of its three independent commissions that meets the requirements of state law and is both efficient and fair; now, therefore,

**THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND DOES RESOLVE AS FOLLOWS:**

### Section 1. Form of Petition

- a. A petition seeking the removal of a commissioner from an independent City commission must be typewritten and include the name of the commissioner it seeks to remove and the specific facts and grounds alleged to warrant the commissioner's removal from office under the law applicable to that commissioner.
- b. The petition shall state the act or acts complained of in concise language and give a detailed description, including the approximate date, location, and nature of each act complained of.
- c. The petition must be signed under penalty of perjury by the person making the charge and include the petitioner's post office address. The petitioner must verify under oath that the person believes the charges or charges to be true and has knowledge of the alleged facts upon which the stated grounds for removal are based.

### Section 2. Definitions

- a. "Malfeasance" means any wrongful conduct that affects, interrupts or interferes with the performance of official duty. Malfeasance also means the commission of an unlawful act.
- b. "Dereliction of duty" means the neglect or knowing failure by a commissioner to perform faithfully a duty imposed by law.
- c. "Incompatibility" means that the commissioner holds two offices or positions the nature and duties of which are such as to render it improper, as a matter of public policy, for one person to retain both.

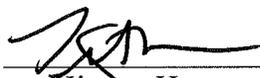
### Section 3. Procedure

- a. The petition shall be filed with the City Clerk who shall promptly serve a copy of the petition upon the commissioner whose removal is demanded.
- b. The City Council will review the petition to determine whether there appears to be a sufficient factual basis to establish, by clear and convincing evidence, grounds for removal of the commissioner.
  - 1) If the City Council determines there is not a sufficient basis for removal of the commissioner, the Council shall dismiss the petition.
  - 2) If the City Council determines that there may be a sufficient basis for removal of the commissioner, the respondent shall be so informed and the matter shall be referred to the Hearing Examiner for a hearing.
  - 3) The City Council's determination shall define and determine the scope of issues to be considered by the Hearing Examiner. The City Council shall prepare a charging document that will be forwarded to the Hearing Examiner. The charging document will state the specific allegations that the Hearing Examiner will address with findings of fact and conclusions of law.
- c. The City Council may, on its own motion, initiate, or add charges to, a petition for removal of any commissioner.
- d. The commissioner named in the petition may ask the City Council to provide him or her with legal representation in the hearing. The City Council will, in its sole discretion, determine whether and the extent to which it is in the city's interest to provide such legal representation.
- e. Within 30 days of the City Council's referral of the matter, the City's Hearing Examiner shall conduct a hearing to determine whether, within the scope of the Council's initial determination, there are grounds for removal of the commissioner.
  - 1) At the hearing, both petitioner and the named commissioner may appear with counsel.
  - 2) The petitioner and the named commissioner may present and cross examine witnesses and give evidence before the Hearing Examiner. The Hearing Examiner may also call witnesses and compel the production of books, records, papers, or other evidence needed. To that end, the Hearing Examiner may issue subpoenas and subpoenas duces tecum at the request of the petitioner, named commissioner, or on his or her own initiative. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time in order to allow for the orderly presentation of evidence.

- 3) The Hearing Examiner or designee shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided that the Hearing Examiner or designee shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.
  - 4) In determining the factual sufficiency of a charge, the petitioner has the burden of proving the facts by clear and convincing evidence.
  - 5) Where a charge alleges the commissioner violated the law, the facts must show the commissioner intended to violate the law. Where the commissioner acted on advice of the City's legal counsel, intent to commit an unlawful act cannot be shown.
  - 6) The petitioner shall bear the burden of establishing legal sufficiency. A charge is legally sufficient if the charge defines substantial conduct clearly amounting to incompetency, incompatibility, dereliction of duty, malfeasance in office, or other good cause and there is no legal justification for the challenged conduct.
  - 7) Lawful, discretionary acts cannot serve as a basis for removal.
  - 8) When a charge is premised on a vote taken by a commissioner, a petition is legally insufficient if it merely attacks the judgment of the commissioner.
- f. The Hearing Examiner shall prepare findings of fact and conclusions of law.
- 1) If the Hearing Examiner determines that the charges in the petition are both factually and legally sufficient, the Hearing Examiner shall forward its findings and conclusions to the City Council for consideration.
  - 2) If the Hearing Examiner determines that the charges are either factually insufficient or legally insufficient then the petition will be dismissed and no further action will be taken. A decision of the Hearing Examiner dismissing a petition is a final order and may not be appealed.
- g. If the Hearing Examiner has determined that the charges in the petition are both factually and legally sufficient, the City Council shall, within 15 days, schedule a public hearing to discuss the charges contained in the petition and vote on whether to remove or retain the named commissioner.

PASSED by the City Council this 5<sup>th</sup> day of October, 2011.

APPROVED by the Mayor this 12 day of October, 2011.

By:   
Kirsten Hytopoulos, Mayor

ATTEST/AUTHENTICATE:

By:   
Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	September 30, 2011
PASSED BY THE CITY COUNCIL:	October 5, 2011
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