



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

Date: August 5, 2019  
To: Honorable Mayor and City Council Members  
From: Mark F. Miller, City Manager  
Lori Grigg Bluhm, City Attorney  
Subject: City Council Investigations

---

Plante & Moran, PLLC presented the findings of their forensic accounting investigation to City Council in a public meeting on July 17, 2019. City Council members discussed the findings and the City Council's power to conduct investigations at the July 22, 2019 regular City Council meeting. City Council members also requested City Administration provide information about how the Council might exercise that power. City Charter Section 4.8 provides, in part:

*The Council or any person or committee authorized by it for the purpose, shall have power to inquire into the conduct of any department, office or officer and to make investigations as to matters in which the municipality has an interest. The Council, for the purposes stated herein, may summon witnesses, administer oaths and compel the attendance of witnesses and the production of books, papers and other evidence.*

City Administration needs clarification from City Council as to the scope and the purpose of the potential investigation in order to provide the requested information. Based on the questions and statements made at the July 22, 2019 City Council meeting, we believe the scope or focus of the investigation is alleged misconduct in office by the Mayor and/or Council members.

Assuming that is correct, City Council must also provide direction regarding the purpose of the investigation because Troy's City Charter and Michigan law limits the possible consequences that could follow such an investigation. Specifically, Troy's Charter has only one provision allowing for discipline of elected officials, which is found in Section 6.4. This section discusses removal of elective officers for "any reason specified by statute for removal of city officers by the Governor," and "for any act declared by this charter to constitute misconduct in office."

The reasons specified by statute (MCL 168.327) for removal of city officers by the Governor include:

- official misconduct
- willful neglect of duty
- extortion
- habitual drunkenness
- felony conviction



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

The City Charter's only explicit misconduct provisions are:

- Failing to obey a vote compelling attendance at a City Council meeting without a viable excuse (Section 4.6); and
- failing to vote on a City Council agenda item unless excused (Section 4.7 (C)); and
- failing to obey an investigative summons or request to produce documents (Section 4.8); and
- voting on approval of a contract without disclosure of a pecuniary interest (Section 6.12 (d)); and
- providing sureties, bonds or bail for any person (Section 6.12 (e)).

There is no state statute expressly defining "misconduct in office." However, there have been a few misconduct in office criminal cases that prosecute a common law crime under the catch all provision of MCL 750.505. *People v. Coutu*, 450 Mich. 348 (1999) is the case most often quoted to define misconduct in office as "*corrupt behavior by an officer in the exercise of the duties of his office or while acting under the color of his office.*" Misconduct in office can be the doing of a wrongful act (malfeasance); or the doing of a lawful act in a wrongful manner (misfeasance); or the failure to perform acts required by the duties of the office (nonfeasance). Generally, the Michigan cases are malfeasance cases brought when an officer has stolen property, or when an officer coerces others to do personal work or favors for the officer. These cases are brought as criminal cases, and the prosecutor has the burden to establish that the officer had a corrupt intent.

Following this, if the scope or focus of the investigation is elected official's misconduct in office, then the remedies are limited. Council could initiate the removal proceeding provided by Section 6.4. Alternatively, a prosecutor could bring criminal charges, or the Governor could remove an elected official pursuant to MCL 168.327. Troy's Charter and State Law do not provide any other explicit remedy for misconduct in office. This is distinguished from an alleged statutory violation of the Freedom of Information Act (MCL 15.240) or the Open Meetings Act (MCL 15.271-272), where mandamus lawsuits can be filed within 180 days of the violation by the attorney general, the Oakland County Prosecuting Attorney, or any other person.

Although it is still open, the FBI bribery investigation into former City Manager Brian Kischnick has not resulted in any additional criminal cases. This is one of four investigations, where many of the same City employees have been interviewed about the same allegations. The initial 2016 whistleblower investigation against Kischnick was completed by outside labor counsel Craig Lange, and the City spent \$21,384.05 on this investigation, which was completed at the hourly rate negotiated as part of Lange's long standing retainer agreement with the City. In 2018, City Administration retained another employment law firm (Landry, Mazzeo & Dembinski), to investigate another whistleblower investigation against Kischnick. This investigation was truncated, however, after City Council terminated Kischnick. The cost of this investigation was \$5,300. Finally, the City recently spent \$68,000 for the post-conviction forensic accounting investigation by Plante & Moran.

We are happy to provide any additional information if requested by Council.

- (b) A vote upon all ordinances and resolutions shall be taken by "Yes" and "No" vote and entered upon the records, except that where the vote is unanimous it shall be only necessary to so state.
- (c) No member of the Council shall vote on any question in which he has a financial interest, other than the common public interest, or on any question concerning his own conduct, but on all other questions each member who is present shall vote when his name is called unless excused by the unanimous consent of the remaining members present. Any member refusing to vote except when not so required by this paragraph shall be guilty of misconduct in office.
- (d) In all roll call votes the names of the members of the Council shall be called in alphabetical order and the name to be called first shall be advanced one position alphabetically in each successive roll call vote.
- (e) There shall be no standing committees of the Council.

### **Section 4.8 - Investigations:**

The Council or any person or committee authorized by it for the purpose, shall have power to inquire into the conduct of any department, office or officer and to make investigations as to matters in which the municipality has an interest. The Council, for the purposes stated herein, may summon witnesses, administer oaths and compel the attendance of witnesses and the production of books, papers and other evidence.

Failure on the part of any officer to obey such summons or to produce books, papers and other evidence as ordered under the provisions of this section shall constitute misconduct in office. Failure on the part of any employee or other person to obey such summons or to produce books, papers or other evidence as ordered under provisions of this section shall constitute a violation of this charter and such person when found guilty of such violation by a competent tribunal may be punished by a fine of not to exceed five hundred dollars or imprisonment not to exceed ninety days, or both, in the discretion of the court.

It is provided further that, in case of failure on the part of any person to obey such summons or to produce such books, papers and other evidence as so ordered, the Council may invoke the aid of the Circuit Court of Oakland County in requiring obedience of such summons or production of such books, papers and other evidence. The Circuit Court of Oakland County, in case of contumacy or refusal to obey such summons or to produce such books, papers and other evidence, may issue an order requiring such person to obey such summons or to produce such books, papers and other evidence touching the matter in question, and any failure to obey such order of the Court may be punished by such Court as contempt thereof.

### **Section 4.9 - Providing for Public Health and Safety:**

The Council shall provide for the public peace and health and for the safety of person and property. The Council shall constitute the Board of Health of the city, and it and its officers shall possess all powers, privileges and immunities granted to boards of health by statute.

- (f) If the officer is removed from office by the Council in accordance with the provisions of Section 6.4.
- (g) Any member of City Council who wants to run for a City elective office different from the office currently held shall file an irrevocable letter of resignation effective no later than the date and time the successor takes office. The letter of irrevocable resignation shall be filed with the City Clerk prior to July 1st to allow for the future vacancy created to be placed on the next Regular Election ballot.

### **Section 6.2.1 - Irrevocable Letter of Resignation:**

Before the expiration of the term of any City elected office, an elected official may file an irrevocable letter of resignation with the City Clerk effective no later than the date the successor takes office. City Council shall declare vacant the elective office as of the effective date set forth in the letter of resignation and shall direct the City Clerk to place the vacant office on the next November or even year August Election under the following circumstances:

- (a) An elected official may file an irrevocable letter of resignation prior to July 1st to allow for the future vacancy created to be placed on the next November Election ballot.
- (b) An elected official may file an irrevocable letter of resignation prior to April 1st in even-years to allow for the future vacancy to be placed on the next even year August Election ballot.

### **Section 6.3 - Vacancies in Boards and Commissions:**

The office of any member of any board or commission created by, or pursuant to, this charter shall be declared vacant by the Council:

- (a) For any reason specified by statute or by this charter as creating a vacancy in office;
- (b) If the officer shall be found guilty by a competent tribunal of any act constituting misconduct in office under the provisions of this charter;
- (c) If such officer shall miss five consecutive regular meetings of such board or commission, or twenty-five percent of such meetings in any fiscal year of the city, unless such absences shall be excused by such board or commission and the reason therefore entered in the proceedings of such board or commission at the time of each absence;
- (d) If the officer is removed from office by the Commission in accordance with the provisions of Section 6.4.

### **Section 6.4 - Removals from Office:**

Removals by the Council of elective officers or of members of boards or commissions shall be made for either of the following reasons: (a) for any reason specified by statute for removal of city officers by the Governor, (b) for any act declared by this charter to constitute misconduct in office. Such removals by the Council shall be made only after hearing of which such officer has been given notice by the Clerk at least ten days in advance, either personally or by delivering the same at his last known place of residence. Such notice shall include a copy of the charges against such officer. The hearing shall afford an opportunity to the officer, in person or by attorney, to be heard in his defense, to cross-examine witnesses and to present testimony. If such officer shall neglect to appear at such hearing and answer such charges, his failure to do so may be deemed cause for his removal. A majority vote of the members of the

Council in office at the time exclusive of any member whose removal may be being considered, shall be required for any such removal.

### **Section 6.5 - Resignations:**

Resignations of elective officers and of members of boards and commissions shall be made in writing and filed with the clerk and shall be acted upon by the Council at its next regular meeting following receipt thereof by the Clerk. Resignations of appointive officers shall be made in writing to the appointing officer or body and shall be acted upon immediately.

### **Section 6.6 - Filling Vacancies in Appointive Offices:**

Vacancies in appointive office shall be filled in the manner provided for making the original appointment. In the case of members of boards and commissions appointed for a definite term, such appointments shall be for the unexpired term.

### **Section 6.7 - Filling Vacancies in Elective Office:**

City Council shall fill vacancies of an elective office that are declared vacant pursuant to Section 6.2 within 30 days by a majority vote of the remaining members of the Council, said appointee to hold office until the successor takes office, the election of which shall be on the next November or even-year August Election date.

### **Section 6.8 - Change in Term of Office or Compensation:**

Except by procedures provided in this charter, the terms of office of the elective offices and of members of boards and commissions appointed for definite terms shall not be shortened. The terms of elective officers of the city shall not be extended beyond the period for which any such officer was elected except that an elective officer shall, after his term has expired, continue to hold office until his successor is elected and has qualified. The Council shall not grant or authorize extra compensation to any officer or employee after the service has been rendered. The salary of any elective officer shall not be increased or decreased from the time of his election until the end of the term of office for which he was elected.

### **Section 6.9 - Oath of Office and Bond:**

Every officer, elected or appointed, before entering upon the duties of his office, shall take the oath of office and shall file the same with the clerk together with any bond required by statute, this charter, or by the Council. In case of failure to comply with the provisions of this section within ten days from the date of his election or appointment, such officer shall be deemed to have declined the office and such office thereupon shall become vacant unless the Council shall, by resolution, extend the time in which such officer may qualify as above set forth.

### **Section 6.10 - Surety Bonds:**

Except as otherwise provided in this charter, all officers of the city whose duties involve the custody of public property or the handing of public funds, either by way of receipt or disbursement or both, and all other officers and employees so required by the Council shall, before they enter upon the duties of their respective offices, file with the city an official bond, in such form and amount as the Council shall direct and approve. Such official bond of every officer and employee shall be conditioned that he will faithfully perform the duties of his office, and will on demand deliver over to his successor in office, or other proper officer or agent of the city, all books, papers, moneys, effects and property belonging thereto, or appertaining to his office, which may be in his custody as an officer or employee; and such bonds may be further conditioned as the Council shall prescribe. The official bond of every officer whose duty it may be to receive or pay out money, besides being conditioned as above required, shall be further conditioned that he will, on demand, pay over or account for to the city, or any proper officer or agent thereof, all moneys received by him as such officer or employee. The requirements of this paragraph may be met by

**MICHIGAN ELECTION LAW (EXCERPT)**  
**Act 116 of 1954**

**168.327 Removal of city officers by governor; grounds; action on charges; service of charges; hearing; eligibility for election or appointment following removal or conviction.**

Sec. 327. The governor shall remove all city officers chosen by the electors of a city or any ward or voting district of a city, when the governor is satisfied from sufficient evidence submitted to the governor that the officer has been guilty of official misconduct, wilful neglect of duty, extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it appears by a certified copy of the judgment of a court of record of this state that a city officer, after the officer's election or appointment, has been convicted of a felony. The governor shall not take action upon any charges made to the governor against a city officer until the charges have been exhibited to the governor in writing, verified by the affidavit of the party making them, that he or she believes the charges to be true. But a city officer shall not be removed for misconduct or neglect until charges of misconduct or neglect have been exhibited to the governor as provided in this section and a copy of the charges served on the officer and an opportunity given the officer of being heard in his or her defense. The service of the charges upon the officer complained against shall be made by personal service to the officer of a copy of the charges, together with all affidavits or exhibits which may be attached to the original petition, if the officer can be found; and if not, by leaving a copy at the last known place of residence of the officer, with a person of suitable age, if a person of suitable age can be found; and if not, by posting the copy of the charges in a conspicuous place at the officer's last known place of residence. An officer who has been removed from office pursuant to this section shall not be eligible for election or appointment to any office for a period of 3 years from the date of the removal. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being section 38.412a of the Michigan Compiled Laws, shall not be eligible for election or appointment to an elective or appointive city office for a period of 20 years after conviction.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1982, Act 505, Eff. Mar. 30, 1983.

**Popular name:** Election Code