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LEGAL MEMORANDUM

To: City Administrator Dylan Mulfinger

From: City Attorney Doug Herman

Re: Pending Criminal Charges against City Councilperson / Leave / Removal from Office

Date: October 23, 2024

Dear Dylan:

The purpose of this memorandum is to provide information for you to provide the Council/Public as part of the City Council Packet regarding the recent charges filed against Councilperson Seeders, her letter suggesting an intent to take leave of her duties as a Councilperson, and potential removal of Councilperson Seeders as a Councilperson.

When considering removal from office, my initial focus is on **Chapter 66 of the Iowa Code “Removal From Office”**.

66.29 City elective officers. Any city officer elected by the people may be removed from office, after hearing on written charges filed with the council of such city for any cause which would be ground for an equitable action for removal in the district court [As set forth within §66.1A], but such removal can only be made by a two-thirds vote of the entire council.

66.1A Removal by court. Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For willful or habitual neglect or refusal to perform the duties of the office.
2. For willful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated.
7. Upon conviction of violating the provisions of chapter 68A.
8. For failure to pay a fine imposed pursuant to section 39A.6 and not dismissed pursuant

66.30 Ordinance. The council may, by ordinance, provide as to the manner of preferring and hearing charges filed pursuant to section 66.29. A person shall not be removed twice by the council from the same office for the same offense. Proceedings before the council shall not be a bar to proceedings in the district court as provided in this chapter.

I next look for guidance in the City of Oelwein City Code and find Article II. Mayor and Council Sec. 3-35 “Removal of Officer Proceedings – Authority; hearing; rules; process.

Sec. 3-35. - Removal of officer proceedings—Authority; hearing; rules; process.

Any city officer or council[person] may be removed from office by the council upon written charges pr[of]ferred against them and filed with the city clerk and notice thereof served on them at least ten days before hearing thereon. The accused shall have the right to be heard and the prosecution and the defense may each be conducted by attorneys. The proceedings shall be so far as practicable in accordance with the practice in law actions in district court. Upon every question arising the question shall be entered of record with the vote thereon which shall be by yeas and nays. The council shall have the power to issue subpoenas for witnesses, and compel their attendance. All process issued in the proceedings shall be served by the city police or by the sheriff or any constable. (Ord. No. 16, section 1, 11-6-1899.)

City Code Section 3-35 is the City response to the authority granted by Iowa Code Section 66.30, spelling out the process to be employed by the City to pursue removal.

After consideration of the above, it is clear that the Council must first find that a ground(s) or cause(s) for removal as set out within Iowa Code §66.1A (1) – (8) exists. This finding is a condition precedent to removal,

This discussion currently centers around removal due to recent criminal charges that include one or more felonies, some resulting from the execution of search warrants by the Oelwein Police Department. You will note that §66.1A does not provide for removal based upon pending felony charges, but rather “upon conviction of a felony”. Because “upon conviction of a felony” is specifically listed as a cause, it would not be appropriate to interpret any of the other provisions of §66.1A to include being charged with a felony.¹

In my opinion, the Council is not in a position to pursue removal based upon the pending criminal charges, that is not a permissible ground for removal.

Councilperson Seeders has submitted a document setting forth her intent to take a “leave of absence” from her City Council position. The taking of leave by a Councilperson is not something that the City Council needs to approve, agree with, or otherwise allow. If Councilperson Seeders wishes to take a leave she may do so. If she does take leave, she will not be performing her duties as a Councilperson and at some point, not set or determined by any particular law or policy, she could be accused of not actively performing as a Councilperson which could subject her to actions related to removal under the Iowa Code and City Code under 66.1A(1) “For willful or habitual neglect or refusal to perform the duties of the office.”

¹ “For willful misconduct or maladministration in office” or “For Corruption”, for example.

While the decision to take leave is Councilperson Seeders decision, the Council, or Councilpersons individually, could express their opinions on her choice to take leave, pro or con.

Other relevant facts to Consider:

1. In our society, there is a presumption of “innocent until proven guilty”. What does an effort at removal communicate to the public when the charges are fresh with no admission of guilt?
 - a. While the charges are serious, they are just that, charges or allegations that have not proceeded too far in the Criminal Justice process yet.
2. Courts prefer that ‘removals’ happen by election, not by Council removal.

Sincerely yours,

Douglas D. Herman

Douglas D. Herman

LYNCH DALLAS, P.C.