

## ***CHAPTER 2.05 Investigation, Censure, or Removal of Town Officers***

### **2.05.010 Definitions.**

- (a) "Charge for removal" shall mean, a formal accusation against a Town Officer specifically identifying an act, or acts, potentially constituting a basis for removal of a Trustee from office.
- (b) "Conviction" shall mean:
  - (1) A guilty verdict;
  - (2) A plea of guilty accepted by the court or the entry of a guilty plea;
  - (3) A plea of nolo contendere (no contest) accepted by the court; or
- (c) "Crimes of moral turpitude" include the following felony, misdemeanors or municipal offenses:
  - (1) Any of the offenses against the person set forth in 18-3-101, et. seq. C.R.S.;
  - (2) Any of the offenses against property set forth in 18-4-101, et. seq. C.R.S.;
  - (3) Any of the offenses involving fraud set forth in 18-5-101, et. seq. C.R.S.;
  - (4) Any of the offenses involving the family relations set forth in 18-6-401, et. seq. C.R.S.;
  - (5) Any of the offenses constituting wrongs to at-risk adults set forth in 18-6.5-101, et. seq. C.R.S.;
  - (6) Any of the offenses relating to morals set forth in 18-7-101, et. seq. C.R.S.; or
  - (7) Any conspiracy, solicitation, or criminal attempt to commit any of the above offenses, or participation as an accessory to any of the above offenses.
- (d) "Investigation" shall mean, a prompt and reasonable inquiry into accusations of conduct which could amount to misconduct or malfeasance, to examine the plausibility of the allegations and whether they state a prima facie case of misconduct or malfeasance against the Town Officer, or whether other prompt reasonable remedial actions are warranted.
- (e) "Malfeasance" shall include:
  - (1) Intentionally misappropriating public funds;
  - (2) Voting on a matter by a Town Trustee pending before the Town without disclosing a personal or private interest in the outcome of the vote;
  - (3) Using public office for personal financial gain.
  - (4) Engaging in a substantial financial transaction with a person supervised in the course of official duties; or,
  - (5) Engaging in other actions in office which place personal gain over the interests of the Town.
- (f) "Misconduct" shall include:
  - (1) Four (4) consecutive absences or six (6) total absences by a Trustee from Council meetings or work sessions held within a calendar year (January 1 through December 31);
  - (2) Willful or habitual refusal to perform the duties of his or her office;

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- (3) Attending Town Council meetings in an intoxicated state;
  - (4) A conviction of a crime of moral turpitude;
  - (5) Repeated failure to adhere to any approved policies with respect to Town Officer conduct;
  - (6) Repeated intimidating communications with Town employees outside the chain of command established by Town policies;
  - (7) Engaging in unwelcome physical or verbal conduct or any written, pictorial, or visual communications directed at an individual or group of individuals based upon that individual's membership in, or perceived membership in, a protected class, which communication or conduct is subjectively offensive to the individual alleging harassment and objectively offensive to a reasonable individual of the same protected class; or,
  - (8) Repeated refusal to participate in training sessions.

(g) "Town officer" – shall mean a Town Trustee, the Mayor, the Clerk, the Treasurer, the Town Administrator, and the Town Attorney.

(Ord. No. xxx)

### **2.05.020 Initiation of Investigation.**

- (a) Accusations of misconduct or malfeasance against a Town Officer shall be reported directly to the Town Administrator, who shall promptly inform the Town Attorney; or, if necessary, shall be made directly to the Town Attorney.
- (b) Upon receiving accusations of misconduct or malfeasance against a Town Officer, the Town Attorney shall promptly suggest that the Town Trustees convene to discuss the alleged misconduct or malfeasance in executive or open session, as applicable, and shall inform the Trustees of the accusations.
- (c) After being informed of the accusations, the Trustees, other than the accused, shall, in open session, vote as to whether to initiate a formal investigation into the allegations.
- (d) In the event the Trustees vote to initiate an investigation, the Town Administrator, or Town Attorney, if instructed, shall promptly hire an experienced third-party to conduct the investigation.

(Ord. No. xxx)

### **2.05.030 Review of Investigation.**

- (a) Upon completion of an investigation pursuant to Section 2.05.020, the results shall be presented to the Trustees in executive session in the event that the results warrant an executive session per the open meeting laws, or in an open session, if applicable per open meeting laws.
- (b) After receiving the results of the investigation, the Trustees shall, in open session, debate and vote whether to levy charges for removal against the Town Officer, whether to take alternative remedial action, or whether to take no action.
- (c) Alternative remedial action may include:
  - (1) Verbal censure;
  - (2) Written censure;
  - (3) Required training sessions;
  - (4) Removal from committees;

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- (5) Removal from liaison positions; or,
  - (6) Other such remedial action as is consistent with the Boards' authority to regulate the conduct of Town Officers.

### **2.05.040 Cause for removal.**

- (a) A Town Officer may only be removed for Misconduct or Malfeasance in office.
- (b) In the event a Trustee no longer qualifies for office pursuant to Chapter 2.04.010(c), for no longer residing within the Town limits, the Trustees may remove the Trustee who no longer qualifies for office – a simple finding by the Trustees, by a majority vote of all the Trustees, that the Trustees no longer resides within the Town limits shall suffice.

### **2.05.050 Procedure.**

- (a) A charge for removal shall be brought against a Town Officer by at least four Town Trustees at a regular or special meeting, at which time a vote shall be held to formally provide the charge for removal, and to schedule a public hearing on the charges;
- (b) The charging document shall state with specificity the facts which form the basis for finding either misconduct in office, malfeasance in office, or both, and shall include a copy of the procedures for the conduct of the hearing;
- (c) The charged Town Officer shall be provided written notice of the charge(s) and the date, time, and place of the hearing on said charge(s), with at least twenty one (21) days prior notice of the hearing, which shall be publicly held before the Town Trustees not subject to the charge, the date of which may be extended at the request of either party, for good cause, made to the hearing officer at least seven (7) days prior to the hearing;
- (d) The Town Trustees shall appoint special counsel to present evidence and make arguments on its behalf;
- (e) The Town Trustees shall appoint a hearing officer to conduct the hearing, and make determinations about the admissibility of evidence, the conduct of examinations, and the conduct of the hearing;
- (f) The Town Trustees may, at the request of the subject of the removal proceedings, provide an attorney to represent the subject of the removal proceedings at the Town's cost, subject to reasonable restrictions on the rate and hours spent on the matter;
- (g) Prior to the hearing the parties shall be entitled to reasonable discovery, as determined by the hearing officer – an exchange of witness lists and exhibit lists shall occur at least seven (7) days prior to the hearing;
- (h) The hearing shall be conducted in a quasi-judicial forum. The allegations shall be presented on behalf of the Town of Palmer Lake by and through special counsel selected by the Town of Palmer Lake through its Town Trustees;
- (i) The hearing shall proceed in a judicial-like procedure whereby each party shall be entitled to make an opening statement, then presenting its evidence, with the Town proceeding first, and the subject of the proceeding second, and concluding with both parties making a closing statement;
- (ji) A record of the hearing shall be created and preserved;
- (k) At the hearing, which shall be open to the public (though members of the public will be removed if they disrupt the hearing), the parties shall have the right to:
  - (1) Present witness testimony, which shall be taken under oath;

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- (2) Subpoena witnesses for testimony;
  - (3) Cross-examine witnesses;
  - (4) Produce documentary evidence;
  - (5) Be represented by legal counsel;
  - (6) Object to the admission of evidence that does not conform to the Colorado Rules of Evidence for admissibility;
  - (7) Summarize legal and factual conclusions after the close of evidence.
- (l) The decision must contain written findings of fact and conclusions of law.
  - (m) The decision to remove a Town Officer shall be subject to judicial review.
- (Ord. No. xxx)

### **2.05.060 Vote at Conclusion of Removal Hearing.**

- (a) The Town Trustees shall have the power to remove a Town Officer from office upon a vote of a majority of all members of the Board of Trustees. The vote shall be whether to generate a written decision that contains written findings of fact and conclusions of law finding that, by a preponderance of evidence [clear and convincing? – having a burden of proof is recommended, and the Trustees can decide what it is]<sup>1</sup>, the Town Officer has committed misconduct or malfeasance in office such that the Trustees have determined that the Town Officer shall be removed from office.
- (b) The decision to remove shall be subject to judicial review.
- (c) A Town Officer who is the subject of the removal charge(s) shall not vote on the question of removal.
- (d) A Town Officer who is not removed by the Town Trustees after conducting a hearing shall not be subject to removal in a future hearing based on identical charges arising out of the same incident that forms the basis of the charge from which they were not removed.
- (e) After the vote for removal has been concluded, and in the event that the charged Town Officer is not removed, the Trustees may vote to engage in alternative actions with respect to the Town Officer based upon the evidence presented. By majority vote, the Trustees may:
  - (1) Publicly censure the charged Town Officer in either written or verbal form;
  - (2) Require the Town Officer to engage in training programs;
  - (3) Remove the Town Officer from any committee assignments;
  - (4) Remove the Town Officer from any liaison positions; or
  - (5) Further define actions or omissions which will be considered to be misconduct or malfeasance in the event the charged Town Officer engages in them in the future; or,
  - (6) Engage in other such remedial action as is consistent with the Boards' authority to regulate the conduct of its members.

(Ord. xxx)

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<sup>1</sup> "Preponderance" means "more likely than not", or "more probable than not" in contrast to "clear and convincing" which can be summarized as "highly probable."

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**2.05.050 Vacancy.**

A vacancy created due to removal of a Town Officer shall be filled as provided by Town Code or Colorado statutes, as applicable.

(Ord. No. xxx)