

EMERGENCY

City of Cincinnati

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An Ordinance No. \_\_\_\_\_

- 2020

**TO SUBMIT** to the electors of the City of Cincinnati an amendment to the Charter of the City to provide for the suspension of members of City Council upon the filing of an indictment or the filing of certain criminal charges, but before a conviction; to provide for the removal of members of City Council upon the conviction of or guilty plea to certain criminal charges; to require ethics training for council members within 60 days of taking the oath of office; to prohibit council members from revising their successor designation certificates subsequent to being indicted for a state or federal felony or the filing of certain criminal charges against them; and to provide that if a member of City Council is in violation of civil statutes pertaining to official City Council duties, the member shall reimburse the City for the member's share of judgments, fines, and penalties, as well as costs associated with the City's legal representation of the member, by amending Section 4b and enacting new Sections 4c, 4d, 4e, and 4f of Article II, and repealing existing Section 4b.

WHEREAS, the Charter of the City of Cincinnati, Ohio does not provide its own process for the forfeiture of an elected position or the removal of an elected official; and

WHEREAS, Article II, Section 1 of the Charter incorporates Ohio laws that are consistent with the Charter; and

WHEREAS, Ohio state laws provide for several lengthy and complex processes to remove an elected official for misconduct in office, conviction of a felony, conflicts of interest, or malfeasance in office, or for the suspension of an elected official for similar offenses; and

WHEREAS, it would benefit the City and its residents to have a more efficient and expedient method for removing elected officials for conviction of certain crimes and to have a process for recovering the costs of defending members of council and for the amount of judgments or fines levied against the City caused by a member of Council's violation of laws while in office; and

WHEREAS, it would benefit the City and its residents and promote the public's confidence in the City's elected officials to require members of Council to receive ethics training within 60 days of taking office through a course approved by the Ohio Ethics Commission; and

WHEREAS, it would benefit the stability of Council and the public's confidence in the City's elected officials to prohibit council members from revising their successor designation certificates subsequent to being indicted for a state or federal felony or the filing of certain criminal charges against them; and

WHEREAS, nothing in this ordinance is intended to abrogate or conflict with the City's duties and responsibilities under Ohio Revised Code 2744; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio, two-thirds of the members elected thereto concurring:

Section 1. That there shall be submitted to the vote of the qualified electors of the City of Cincinnati for their approval or disapproval at the primary election to be held May 4, 2021, an amendment to the Charter of the City of Cincinnati, to provide for the following: a pre-conviction suspension of a member of council from office upon the filing of an indictment alleging a state or federal felony or upon the filing of criminal charges against the member for a crime involving moral turpitude as defined by Ohio Revised Code Section 4776.10 or a successor statute, to provide for the removal of a member of council upon conviction of or guilty plea to said crime, and to provide that if a member of City Council is in violation of civil statutes pertaining to official City Council duties, the member will reimburse the City for the member's share of judgments, fines, and penalties, as well as costs associated with the City's legal representation of the member; to require ethics training for council members within 60 days of taking the oath of office; and to prohibit council members from revising their successor designation certificates subsequent to being indicted for a state or federal felony or the filing of certain criminal charges against them by amending Section 4b and enacting new Sections 4c, 4d, 4e, and 4f of Article II, as follows:

**ARTICLE II. - LEGISLATIVE POWER. one section amended and new sections enacted:**

**Section 4b.**

Before taking the oath of office each member-elect of council shall file with the council a successor designation certificate certifying the name of one or more fellow members of

council to select a successor if his or her office as member of council becomes vacant for any reason.

Should a vacancy occur, the members of council certified by the former member are empowered to designate a successor within 60 days of the vacancy by a majority vote of their members or of those remaining thereof. The signed designation shall be filed with council within the 60-day period and shall be presented by council at its next regular meeting.

Should there be no valid and effective successor designation certificate for a vacant office, the council may fill the vacant office by a majority vote of the remaining members within 30 days of the vacancy. Should the certified members of council fail to designate a successor within 60 days of the vacancy, council may fill the vacant office by a majority vote of the remaining members within 30 days after the time allowed for the certified members' designation has expired. Should council fail to fill the vacancy within the time prescribed, the mayor shall appoint the successor without requiring the consent of council.

A person designated as a successor or named to fill the vacancy by action of council or the mayor shall, upon taking the oath of office, have the status of a member of council duly elected for the unexpired term.

Any member of council may amend his or her successor designation certificate at any regular meeting of the council-, except no member of council may amend the member's successor designation certificate subsequent to an indictment of the member alleging a state or federal felony or the filing of criminal charges against the member for a crime involving moral turpitude as defined by R.C. 4776.10 or a successor statute. A member of council duly designated or named by council or the mayor to fill a vacancy shall file a successor designation certificate as in the case of originally elected members and his or her name may be certified by other members.

#### **Section 4c.**

Council may suspend a member of council upon the vote of the majority of council if (i) a member of council is indicted for an alleged felony under state or federal law, or (ii) a member of council is charged with allegedly committing a crime involving moral turpitude as defined by R.C. 4776.10 or a successor statute. Upon notice of such indictment or charge, the member of council shall immediately notify the clerk of council and the city solicitor. Upon notice of such indictment or charge, the clerk of council shall place a council suspension motion for suspension of a council member on the agenda for the next regular or special council meeting occurring no sooner than two business days later. The suspension motion shall not be subject to mayoral referral or committee consideration. The clerk shall provide notice that the suspension motion will be on the agenda to the member of council whose suspension is being considered, and that member shall have an opportunity to be heard prior to the member's suspension. The member of

council who is the subject of the suspension motion shall not vote on the suspension motion. In the event of a tie vote, the mayor shall cast a deciding vote to break the tie.

A suspended member of council shall not exercise any of the rights, powers, or responsibilities of the holder of that office during the period of the suspension. A suspended member of council shall not represent council to the public, shall not vote on any matters considered by the council or a council committee, and shall not introduce legislation to be considered by the council or a council committee. A suspended member of council shall not participate in the meetings of council or council committees other than as a private citizen.

A suspension of a member of council is a temporary vacancy of that office. This vacancy shall be filled on an interim basis according to the last successor designation certificate filed with council prior to the indictment or charge that initiated the suspension. The interim council member shall possess all of the rights, powers, and responsibilities of the holder of that office during the period of the suspension. The suspension shall continue until the earlier of: (i) the reinstatement of the suspended member of council as provided in the following paragraph of this section 4c; (ii) the expiration of the elected term of office of the suspended member of council; or (iii) the removal of the suspended member of council from office according to section 4d or as otherwise provided by law.

A suspended member of council shall be reinstated at the next regularly scheduled or special meeting of council following the dismissal or acquittal of the criminal charges that supported the suspension. A suspended member of council shall not be reinstated following the expiration of his or her elected term of office. A suspended member of council shall continue to receive a salary until the suspended member of council vacates the office. The city may file a civil action in the appropriate court to recover salary paid to that former member of council from the date of the suspension to the date the former member of council pleads guilty to or is found guilty of the crime with which the former member of council was charged.

#### **Section 4d.**

If a member of council, while on city council, is convicted of, or otherwise pleads guilty to, a felony under state or federal law, or a crime involving moral turpitude as defined by R.C. 4776.10 or a successor statute, the member shall immediately forfeit the member's position on council and is liable to pay back all compensation received from the city dating back to the date of suspension. Upon notice of such conviction, the member of council shall immediately notify the clerk of council and the city solicitor. The member of council shall not attend or otherwise participate in an official capacity in any meeting of council or council committee occurring after conviction.

Upon notice of such conviction or plea, the clerk of council shall place a motion for removal of a council member on the agenda for the next council meeting occurring no sooner than two business days after the clerk receives notice of the conviction or plea. Council shall confirm the conviction or plea and remove the member of council by

passing the removal motion by majority vote within ten business days following the member's conviction if the member has not resigned. The removal motion shall not be subject to mayoral referral or committee consideration. If council does not pass the removal motion within ten business days following notice of conviction or plea to the clerk of council, the member of council's removal shall be effective on the eleventh business day after notice of the conviction.

The removal of a member of council under this section shall not invalidate any legislative action of the member or of council prior to the removal of the member of council.

The removal section is intended as an exercise of home rule authority governing the removal process of a member of Council and shall the render Ohio Revised Code Section 733.72 (or its successor provisions) inapplicable as to members of council. A member of council who is convicted of or pleads guilty to a misdemeanor crime involving moral turpitude as defined by R.C. 4776.10 or a successor statute and who is removed under this section shall be forever barred from serving as a member of council or mayor. A member of council whose conviction of a misdemeanor crime involving moral turpitude as defined by R.C. 4776.10 or a successor statute is overturned on appeal shall not be barred from serving as a member of council or mayor.

#### **Section 4e.**

If a person in his or her capacity as an individual member of council is found by a court of competent jurisdiction to have violated civil statutes pertaining to the member's performance of official city council duties, the member shall reimburse the city for the member's share of any court judgments, fines, or monetary penalties against the city for the violation if the court judgment includes a finding that the member of council:

- (1) Acted in bad faith;
- (2) Lacked a reasonable belief that the member's activities were in the best interest of the city or in furtherance of the official practices and policies of the city;
- (3) Engaged in activities manifestly outside the scope of the member's official duties as a member of council; or
- (4) Acted in a willful, wanton, or malicious manner.

Further, upon such judgment, the member of council shall reimburse the city for the member's share of any costs of legal representation by city staff or outside counsel hired by the city. These costs shall include, but are not limited to, attorneys' fees for outside counsel, expert witnesses, consultants, depositions, and court costs.

Reference herein to judgments means final judgments. Judgment shall not mean temporary orders (including but not limited to temporary restraining orders or preliminary injunctions) or interlocutory judgments.

Notwithstanding any language to the contrary in this section, the council reimbursement obligations in this section shall not apply to costs incurred by the municipal corporation in furtherance of its legal duty under state law to indemnify or hold harmless the member of council as a city employee.

**Section 4f.**

Within 60 days of taking the oath of office, each member of council shall complete, and shall submit certification of completion to the clerk of council, an approved course covering Ohio ethics law for local government officials and employees, which is approved by the Ohio Ethics Commission. Failure to submit a certification within 60 days will result in suspension of a member of council's legislative privileges until the certification is submitted to the clerk of council.

In the event a course approved by the Ohio Ethics Commission covering Ohio ethics law for local government officials and employees is not available within 60 days of a member of council taking the oath of office, the city solicitor may provide alternative and equivalent training in order to meet the 60-day deadline. A member of council shall strive to notify the city solicitor and the clerk of council within 30 days of taking the oath of office if a course approved by the Ohio Ethics Commission is not anticipated to be available within 60 days of taking the oath of office.

For the purposes of this section, legislative privileges means the right to attend or participate in council or council committee meetings as a council member, the right to vote on or propose actions or agenda items to council or council committee meetings, and the right to be counted for purposes of establishing quorum for council or council committee meetings.

Section 2. That the form of submission of the proposed amendment to the electors shall be substantially as follows:

**CHARTER AMENDMENT**

**A majority vote is necessary for passage.**

**YES**

**NO**

Shall the Charter of the City of Cincinnati be amended to provide for a pre-conviction suspension of a member of council if the member of council is indicted for allegedly committing a state or federal felony or a crime involving moral turpitude, where the suspended member of council shall be suspended from official duties but shall receive a salary during the suspension that may be recovered by the city upon the member's conviction, to also provide for the removal of a member of council upon a conviction of or guilty plea to said crime, to require ethics training for council members within 60 days of taking the oath of office, to prohibit council members from revising their successor designation certificates subsequent to being indicted for a state or federal felony or the filing of certain criminal charges against them, and to provide that if a member of council is in violation of civil statutes pertaining to official council duties, the member will reimburse the City for the member's share of judgments, fines, and penalties, as well as costs associated with the City's legal representation of the member, by amending Section 4b and enacting new Sections 4c, 4d, 4e, and 4f of Article II?

Section 3. That the Clerk of Council shall give notice of the proposed Charter Amendment in the manner provided by Sections 8 and 9 of Article XVIII of the Ohio Constitution and Section 731.211 (B) of the Ohio Revised Code.

Section 4. That the Clerk of Council is directed to certify and transmit to the Board of Elections of Hamilton County, Ohio, a copy of this ordinance and direct the said Board to submit the proposed Charter amendment to the electors of the City of Cincinnati as provided by law.

Section 5. That the Board of Elections of Hamilton County, Ohio, shall certify to the Council the result of the vote upon said amendment, and if said amendment is approved by a majority of the electors voting thereon, amended Section 4b and new Sections 4c, 4d, 4e, and 4f of Article II shall be enacted and become a part of the Charter of the City of Cincinnati, and existing Section 4b shall be repealed.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate necessity to authorize the Clerk of Council to certify and transmit this ordinance to the Hamilton County Board of Elections at least sixty days prior to the May 4, 2021 primary election.

Passed \_\_\_\_\_, 2020

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

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Deletions are struck through. Additions are underlined.