

Planning Commissioner Removal Procedures Ordinance

Ordinance Number 2007-1

ADOPTED February 15, 2007

WHEREAS, pursuant to West Virginia Code § 8A-2-4(k) [2004] the West Virginia Legislature authorized governing bodies to establish procedures for removal of members of the planning commission for inactivity, neglect of duty or malfeasance; and

WHEREAS, the appointment of a planning commissioner to the Jefferson County Planning Commission is made and confirmed by the County Commission and such appointment represents the considered judgment of the County Commission that the individual selected is qualified to perform the duties of a planning commissioner; and

WHEREAS, the citizens of Jefferson County have an interest in the continuing service of those individuals appointed to serve as planning commissioners; and

WHEREAS, Jefferson County and its citizens have a vital interest in ensuring that individuals who fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines are willing to volunteer their services to the Jefferson County Planning Commission; and

WHEREAS, qualified individuals will not be willing to volunteer their services to the Jefferson County Planning Commission if they risk being hectorred out of office by potentially bankrupting legal fees and costs incurred in defending themselves from removal petitions filed by third parties pursuant to West Virginia Code § 6-6-7; and

NOW, THEREFORE, BE IT ORDAINED by the County Commission of Jefferson County, West Virginia as follows:

Section 1. IN GENERAL

(A) Purpose and Intent. The purposes and intent of these Planning Commissioner Removal procedures are:

- (1) To establish uniform procedures for the removal of planning commissioners first appointed or re-appointed to the planning commission on or after the effective date of West Virginia Code § 8A-2-4 upon charges preferred by a third party;
- (2) To ensure that qualified individuals willing to volunteer their services to the planning commission will do so without undue fear of being hectorred out of office by potentially bankrupting attorneys fees and costs incurred in defending a removal action upon charges preferred by a third party pursuant to W. Va. Code § 6-6-7;
- (3) To limit Jefferson County's exposure to costly attorney's fees and costs that the County might otherwise be required to pay on behalf of a planning commissioner who must defend against a removal action upon charges preferred by a third party pursuant to W. Va. Code § 6-6-7;
- (4) To provide the exclusive procedure for removal by a third party of a planning commissioner first appointed or re-appointed to the planning commission on or after the effective date of West Virginia Code § 8A-2-4;
- (5) This Ordinance is procedural as it sets forth the process for removal of planning commissioner first

appointed or re-appointed to the planning commission on or after the effective date of West Virginia Code §8A-2-4. It is not intended to create or diminish the substantive due process rights embodied in the West Virginia Constitution or West Virginia Code.

Therefore, it is the express purpose and intent of the Jefferson County Commission that this Ordinance be applied retroactively from the effective date of West Virginia Code § 8A-2-4;

(6) To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

(B) Rules of Construction. The rules of judicial construction apply to this Ordinance.

(C) Definitions

“Inactivity”: A type of neglect of duty characterized by habitual indisposition to activity whether by reason of unavailability or indolence.

“Malfeasance”: This term is co-extensive with the meaning of the same term in W. Va. Code § 6-6-7 as interpreted and applied by the West Virginia Supreme Court.

“Neglect of Duty”: This term is co-extensive with the meaning of the same term in W. Va. Code § 6-6-7 as interpreted and applied by the West Virginia Supreme Court.

“Third Party”: Any person or county officer authorized by W. Va. Code § 6-6-7 to prefer charges for the removal of a planning commissioner. The term “third party” does not include the Jefferson County Commission.

(D) General Provisions; Applicability

(1) Term. This Ordinance and the procedures established herein shall remain in effect unless and until repealed, amended, or modified by the County Commission in accordance with applicable state law and the County’s code, ordinances and resolutions.

(2) Application. This Ordinance applies retroactively and prospectively to all actions preferred by a third party to remove a planning commissioner who was first appointed or re-appointed to the planning commission after the effective date of W. Va. Code 8A-2-4. The procedures set forth in this Ordinance do not apply to a removal action upon charges preferred by the Jefferson County Commission. The procedures set forth in W. Va. Code § 6-6-7 shall continue to apply to charges for the removal of a planning commissioner preferred by the County Commission so as to ensure that the County Commission itself is not at once acting as the petitioner for removal and judge upon the merits of a petition for removal.

Section 2. PROCEDURES FOR THE REMOVAL OF A PLANNING COMMISSION UPON CHARGES PREFERRED BY A THIRD PARTY

(A) In General

A county officer shall initiate a petition for the removal of a planning commissioner by reducing to writing specific and detailed averments in the form of a petition and the petition shall be filed with the

County Clerk. A third party, who is not a county officer, shall initiate a petition for the removal of a planning commissioner by reducing to writing specific and detailed averments in the form of a petition duly verified by at least one of the persons bringing the same and the petition shall be filed with the County Clerk. The petition must be signed by fifty or more county residents who voted in the general election next preceding the filing of such charges.

(B) Bond.

At the time of filing of the petition a cash bond in a form and from a surety satisfactory to the County Commission shall be due. The amount of the bond shall not exceed twenty-thousand dollars [\$20,000.00] payable to the County Commission. The cash bond shall be forfeited for the purpose of satisfying the planning commissioner's legal fees and costs if the charges preferred arise from the discharge of an official duty in which the county has an interest and the planning commissioner is found by the County Commission to have acted in good faith. Otherwise, the bond shall be returned. In the event that the forfeited cash bond exceeds the planning commissioner's legal fees and costs the excess shall be refunded to the petitioners. In the event that the forfeited bond funds are insufficient to satisfy the planning commissioner's legal fees and costs, the petitioners, other than a county officer, shall indemnify and hold harmless the County Commission for such amount in excess of the cash bond.

(C) Waiver of Bond

The County Commission may, in the exercise of its discretion, vote to waive the required cash bond if the fifty or more petitioners who petition for removal of a planning commissioner provide sufficient evidence that, in the aggregate, they are financially unable to secure the required bond.

(D) Notice to Planning Commissioner

Upon the filing of a petition for removal with the County Clerk, the County Commission shall cause to be served by certified mail, return receipt requested and/or hand delivery to the planning commissioner against whom charges are preferred a true and complete copy of the petition for removal.

(E) Hearing

The County Commission may appoint a hearing officer to hear the petition for removal in which case the hearing officer shall have the authority to conduct hearings as required by this Ordinance. The hearing shall be conducted not less than forty-five (45) days after service of the petition for removal upon the planning commissioner against whom charges are preferred. The hearing officer shall take sworn testimony, receive evidence and exhibits, rule on evidentiary objections, cause the testimony to be taken by stenographic reporter or electronic recording device and make proposed findings of fact and recommendations of law which the County Commission may adopt or the County Commission may substitute its own findings of fact

in support of its decision. The County Commission shall make such order or decision upon the petition for removal as the County Commission determines is warranted, including an assessment against the petitioners of the fees and charges of the hearing officer and costs of the hearing if removal of the planning commissioner is not ordered.

(F) Burden of Proof

The petitioners bear the burden of proving by clear and convincing evidence that removal is warranted. The decision of the County Commission pursuant to this Ordinance shall enjoy the presumption of correctness.

(G) Appeal of County Commission Decision

An appeal of the decision of the County Commission made pursuant to this Ordinance shall be made by Writ of Certiorari filed within thirty (30) days of the entry of the decision of the County Commission.

Section 3. PROCEDURES FOR THE REMOVAL OF A PLANNING COMMISSIONER UPON VOTE BY THE COUNTY COMMISSION OF JEFFERSON COUNTY

(A) In General

The County Commission may, upon a majority vote, decide to consider whether to remove a Planning Commissioner from the Jefferson County Planning Commission.

(B) Procedure

Upon a such a vote to consider removal, the County Commission shall provide notice to the Planning Commissioner whose removal is to be considered by certified mail, return receipt requested, or by hand delivery to the Planning Commissioner whose removal is to be considered. The notice shall be in the form of an Order of the County Commission which schedules a date and time for such consideration, as well as the reasons for such consideration. The Planning Commissioner whose removal is sought may appear at that date and time and shall be given an opportunity to be heard by the County Commission as to the reasons why his or her removal is not warranted, and may be represented by counsel at such hearing. After hearing from the Planning Commissioner whose removal is sought, the County Commission shall take a majority vote to determine whether removal of the Planning Commissioner is warranted.

Section 4. SEPARABILITY AND CONSTRUCTION

(A) Liberal Construction

The provisions of this Ordinance shall be liberally construed to effectively fulfill its purpose and intent.

(B) Separability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of this Ordinance shall be deemed to be a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining provisions of this Ordinance nor impair or nullify the remainder of this Ordinance, which shall continue in full force and effect.

WHEREFORE, the undersigned hereby certifies that this Ordinance was approved and adopted by the Jefferson County Commission on the 15th day of February, 2007.

Attest: Jefferson County Commission