

Bill Sutherland

From: Genovich, Laura <LGENOVICH@FOSTERSWIFT.COM>
Sent: Tuesday, February 28, 2023 1:59 PM
To: William Sutherland (norvellsupervisor@gmail.com)
Cc: Gabis, Sarah
Subject: Removal of PC Member

Bill –

You asked about the process to remove a member of the Planning Commission. Generally, the process is set forth in Section 15(9) of the Michigan Planning Enabling Act, MCL 125.3815:

The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the planning commission. Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office. Unless the legislative body, by ordinance, defines conflict of interest for the purposes of this subsection, the planning commission shall do so in its bylaws.

The statute is silent as to who can bring the charges, so by implication, anyone can bring charges. See 2018 Mich Op Att'y Gen No. 7307 (Dec. 19, 2018) (interpreting the statute for removal of elected officials and finding that "Section 369 [MCL 168.369] is not limiting with regard to who can make a charge for an elected officer's removal. The statute simply refers to 'the party making the charges' and does not otherwise define who may bring them").

Once charges are made, the legislative body must hold a public hearing. Although a planning commission member does not have a "property interest" in the position that would lead to due process rights, the legislative body still must provide reasonable notice of the time and place of the public hearing and allow the PC member or his representative to speak at the hearing. We typically recommend that a township mail or personally deliver notice to the planning commission member and keep a record of how notice was provided.

In terms of the grounds for removal, the legislative body must find "misfeasance, malfeasance, or nonfeasance in office" to remove the PC member. Those are defined as follows through case law:

- Malfeasance: the official acts with "willful and knowing wrongdoing."
- Misfeasance: the official performs a lawful function of office in an improper manner.
- Nonfeasance: the official fails to perform a duty of office.

The conduct must arise in office; that is, the fact that a planning commission member commits an unrelated crime would typically not constitute misfeasance, malfeasance, or nonfeasance in office.

If charges are made against a PC member, we recommend having our office review the charges and – if conduct that could be misfeasance, malfeasance, or nonfeasance in office is alleged – we can assist in preparing the notice of public hearing.

Please let me know if you have any questions or concerns. Thanks.

Laura J. Genovich

Shareholder
Foster Swift Collins & Smith PC
1700 East Beltline, N.E., Suite 200
Grand Rapids, MI 49525-7044
Phone: 616.726.2238
Mobile: 616.560.5509 – *voice or text*
Fax: 616.726.6813
lgenovich@fosterswift.com
www.fosterswift.com
[Firm Profile & Biography](#)

DISCLAIMER/CONFIDENTIALITY: This communication, along with any documents, files or attachments, is intended only for the use of the addressee and may contain legally privileged and confidential information. Any document attached is a legal document and should not be changed or altered without the knowledge and approval of legal counsel. The sender takes no responsibility for any alterations, additions, revisions or deletions to any such document. Due to software and printer variations, documents printed at the recipient's location may vary from the original printed document.