

**A RESOLUTION CONCERNING THE REMOVAL
OF DR. JERRY BROWN FROM THE OFFICE OF MAYOR
OF THE CITY OF WAYNESVILLE, MISSOURI**

WHEREAS, Dr. Jerry Brown is the elected Mayor of the City of Waynesville, Missouri; and,

WHEREAS, during his term as Mayor, Dr. Brown is alleged to have committed certain acts which may constitute misfeasance, malfeasance, and/or nonfeasance in office, as more specifically set out in the attached Articles of Impeachment; and,

WHEREAS, the City Council of the City of Waynesville desires to consider such allegations, and if determined to be true, further consider and determine, consistent with §110.170 of the City Code of the City of Waynesville, Missouri ("Code"), whether said actions constitute misfeasance, malfeasance, and/or nonfeasance in office and whether Mayor Brown should be disciplined, up to and including removal from office; and,

WHEREAS, the City Council accordingly desires to schedule a hearing where it will convene as a Court of Impeachment to hear evidence, provide notice to Mayor Brown of these proceedings, the applicable rules to be observed, and an opportunity to be heard on the charges identified in the Article of Impeachment, and authorize the issuance of subpoenas necessary for such purposes; and

WHEREAS, this Resolution has been passed by a majority of the City Council and the Mayor has no authority to veto such a resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAYNESVILLE, MISSOURI, AS FOLLOWS:

Section 1. Mayor Brown is hereby provided notice of the charges and specifications as presented in the Articles of Impeachment prepared by the City's Special Prosecutor, a copy of which is attached as Exhibit A and incorporated by reference. The City shall effect immediate service of the Resolution and Articles of Impeachment on Mayor Brown.

Section 2. The City Council shall convene as a Court of Impeachment at a public hearing on September 22, 2022, at 5:30 p.m., and such hearing shall continue from day to day or at such later date and time as may be found necessary, at the City Council Chambers, City Hall, 100 Tremont Center, Waynesville, MO 65583, to hear and consider the allegations, and if determined to be true, to determine whether Mayor Brown should be removed from office, or other disciplinary action taken, pursuant to the authority granted under §110.170 of the Code and/or the Missouri Administrative Procedure Act.

Section 3. The City's Attorneys, Lauber Municipal Law, LLC, shall present the City's case and have the burden of proving the alleged charges; Mayor Brown may be represented by counsel at the hearing. Both parties shall be entitled to present evidence and to cross-examine witnesses. Mayor Brown shall have a deadline of 5:00 p.m. on September 5, 2022, to file, should he desire,

a Reply to the Articles. The Parties shall exchange a list of witnesses and exhibits to be offered at the hearing and any pre-hearing motions no later than 5:00 p.m. September 8, 2022.

Section 4. The President Pro Tem, or another duly authorized Councilmember, shall preside over the hearing before the Court of Impeachment and shall make all rulings on procedural, evidentiary, or other matters brought to his attention, with the assistance of a legal advisor, selected by the City Administrator, and take all such action necessary or desirable to facilitate the prompt and fair hearing and consideration of the charges. The City Administrator is further authorized to enter into an agreement on behalf of the City with the legal advisor and, if in the opinion of the City Administrator it is advisable, to select and appoint Special Counsel to act in place of the City Attorneys.

Section 5. The contested case hearing before the Court of Impeachment shall be conducted in accordance with the Ordinances of the City of Waynesville, Missouri, and the Missouri Administrative Procedure Act, as applicable. The Court of Impeachment shall consider the evidence, arguments of counsel, and written briefs of the parties, if any, and shall cause written findings of fact and conclusions of law to be had on the charges presented. The decision of the Court shall be published, along with such further action(s) as may be authorized or required.

Section 6. This action is taken by and on the recommendation of the City Council independent of the Mayor's approval or recommendation and thus a two-thirds (2/3) majority vote of all members of the City Council sitting as a Court of Impeachment is required to support a finding of guilt and imposition of discipline, up to and including removal from office, pursuant to §110.170 of the Code.

PASSED BY THE CITY COUNCIL OF THE CITY OF WAYNESVILLE, MISSOURI THIS 29th DAY OF AUGUST, 2022.



Sean A. Wilson
President Pro Tem

ATTEST:



Michele Brown, City Clerk



**BEFORE THE COURT OF IMPEACHMENT
CITY OF WAYNESVILLE, MISSOURI**

**IN THE MATTER OF THE IMPEACHMENT
OF JERRY BROWN:**

)
)
)
)

ARTICLES OF IMPEACHMENT

WHEREAS, Jerry Brown (“Respondent”) was elected a Mayor of the City of Waynesville, Missouri at the local election held on _____.

WHEREAS, the City Council without the consent of the Mayor passed a resolution, in accordance with §110.170 of the Municipal Code of the City of Waynesville, Missouri (hereinafter the “City Code”), and §77.340 RSMo., authorized proceedings, to consider the removal of Jerry Brown as the Mayor of the City of Waynesville for alleged acts of misfeasance, malfeasance, and/or nonfeasance as described in these Articles of Impeachment with good cause shown.

NOW THEREFORE, the City of Waynesville, Missouri, pursuant to §110.170 of the City Code, hereby issues the following charges and Articles of Impeachment against Mayor Jerry Brown:

GOVERNING LAW AND JURISDICTION

The City of Waynesville, Missouri is a city of the 3rd class of the State of Missouri. As such, the power and authority to “pass ordinances regulating the manner of impeachment and removals,” of the City Council and/or the Mayor are delegated by the legislature to the Council by §77.340 RSMo. The City Council enacted §110.170 of the City Code (which closely follows the provisions of §77.340) and provides:

The Mayor may, with the consent of a majority of all the members elected to the City Council, remove from office, for cause shown, any elective officer of the

City, such officer being first given opportunity, together with his/her witnesses, to be heard before the Council, sitting as a court of impeachment. Any elective officer may, in like manner, for cause shown, be removed from office by a two-thirds (2/3) vote of all the members elected to the City Council, independently of the Mayor's approval or recommendation.

Thus, removal of the Mayor is authorized, on a vote of two-thirds (2/3) of all members of the City Council, independent of the Mayor's approval or recommendation. There are eight elected Councilmembers—two from each of four Wards—so a vote of 6 or more Councilmembers is required to impeach the Mayor.

Language in §110.070 mirrors that found in §79.240 RSMo. pertaining to fourth-class cities. *Fitzgerald v. City of Maryland Heights* interpreted this language and held that “the appropriate meaning of the ‘for cause’ standard for impeachment ... should ... specifically relate to and affect the administration of [the] office, and ... be ... of a substantial nature directly affecting the rights and interests of the public”(796 S.W.2d 52, 56 (Mo. App. E.D. 1990) (citing *McCallister v. Priest*, 422 S.W.2d 650 (Mo. banc 1968)). The Court further explained that ‘cause’ itself should also be “limited to objective reasons which reasonable people, regardless of their political persuasion, could agree would render any [office holder’s] performance ineffective.” *Id.*

Fitzgerald defines three types of ‘cause’ that support removal from office: (1) misfeasance, (2) malfeasance, and (3) nonfeasance. According to *Fitzgerald*, ‘misfeasance’ is the improper performance of some act that may lawfully be done; malfeasance is the commission of some act wholly beyond the actor’s authority; and, nonfeasance is the failure to perform a required duty. *Id.* at 56-57. A finding of any of these is sufficient to support removal from office under the City’s Charter and *Fitzgerald*.

The oath of office required by §115.030 of the City Code and taken by the Mayor and Councilmembers requires that each “faithfully demean” themselves in office. The Missouri

Supreme Court has provided a standard for analyzing whether an elected official's actions and/or omissions show that they faithfully demean themselves in office and the consequences of failure. In *State ex rel. McKittrick v. Wymore*, an elected prosecuting attorney's refusal to act on open and obvious illegal activities was compared to his oath to faithfully demean himself in office. 132 S.W.2d 979 (Mo. 1939). The Court compared the defendant's conduct to what a faithful prosecutor should have done in that situation. Having failed to find reasonable justification for the prosecutor's conduct, the Court found he failed to faithfully demean himself in office. Such finding was held to require his removal from office.

FACTS

The following facts are common to all allegations:

1) The City of Waynesville has, by valid ordinance and/or law, established the City's form of government and defined the powers and duties of officials in the City Code at **Chapter 110: Mayor and City Council** as follows.

a. The Code provides at §110.040: *Powers and Duties of Mayor and Council – Generally*, that:

“The Mayor and Council shall have the care, management and control of the City and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this State, and such as they shall deem expedient for the good government of the City, the preservation of peace and good order, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same.”

b. The Code provides at §110.050: *Mayor to be President of Council – Vote that*:

“The Mayor shall be President of the Council and shall preside over same, but shall not vote except in case of a tie in said Council, when he/she shall cast the

deciding vote; but provided, however, that he/she shall have no such power to vote in cases when he/she is an interested party. He/she shall have the superintending control of all the officers and affairs of the City, and shall take care that the ordinances of the City and the State laws relating to such City are complied with.”

2) The City has by valid ordinances regulated the type of contact allowed between the Mayor and employees subordinate to the City Administrator.

- a. The City Code prohibits the Mayor from dealing with the administrative staff except through the City Administrator, and from giving orders to the employees of the city either publicly or privately (City Code at §116.050(D)).
- b. The City Code explicitly prohibits the Mayor from requesting that any person be employed by the city or take any part in the appointment or removal of any employee (City Code at §116.050(D)).

3) The City of Waynesville has adopted a code of ethics (the “Ethics Code”), codified in §100.050 of the City Code.

- a. The Ethics Code provides that “The professional and personal conduct of public officials shall be above reproach and shall avoid even the appearance of impropriety.” (City Code at §100.050 (C)).
- b. The Ethics Code provides that “Public officials shall respect and adhere to the City Administrator form of government as outlined in Chapter 116 of the City’s Municipal Code with respect to the City Administrator’s relationship to the Mayor and City Council.” (City Code at §100.050(N)).
- c. The Ethics code further provides that "Except as provided by ordinance, the Mayor and/or Councilmen shall not interfere with the

administrative functions of the City, the professional duties of City staff, personnel issues concerning hire, promotion or discipline (except upon appeal as provided for by ordinance), or impair the ability of staff to implement City policy and decisions. Public Elected Officials shall not direct or request services from City staff but shall forward all requests or concerns to the City Administrator for review.” (City Code at §100.050(N)).

- d. The Ethics code provides that "All City elected and appointed officials shall conduct themselves in a professional business manner and should refrain from the public use of profane or offensive language so as to reflect well on the City. The City strongly disapproves of and does not tolerate harassment of the public, other elected officials, or City staff. Public officials shall avoid offensive or inappropriate harassing behavior. Complaints of harassment, targeting of employees or complaints of inappropriate conduct will be promptly and carefully investigated in accordance with City policy.” (City Code at §100.050(O)).
- e. The Ethics code provides that "Public officials shall recognize their roles in dealing with City employees and refrain from creating the perception of favoritism, confusing staff in regards to daily duties or tasks or any other form of inappropriate action to City staff.” (City Code at §100.050(P)).

4) In violation of city ordinances, Mayor Brown sought to have the public works director, Mitch McDonald, fired.

5) In violation of City Ordinances, Mayor Brown ordered the staff to interview Alan Clark for the position of Economic Development Director, even though Mr. Clark had not applied for that position.

6) Mayor Brown has engaged in threatening and abusive conduct toward the staff such that at least four employees have refused to work with him.

7) In violation of city ordinances, Mayor Brown has interfered in the day-to-day operations of the city staff.

8) Although not authorized to do so, the Mayor has conducted a private investigation of the city administrator, including pressuring employees to provide him with information, in an effort to discredit the city administrator for primarily personal reasons.

9) The Mayor has engaged in erratic behavior which calls into question his fitness for office, including the following:

A. Days after ordering that Alan Clark be interviewed for the position of economic development director the Mayor stated that he did not know why Clark had been interviewed in the first place.

B. After announcing during a public meeting that there would be a special session, the Mayor demanded days later to know who had called the special session.

10) Mayor Brown was previously censured by the City Council for misconduct in office and served a list of requirements and corrective actions.

CHARGES

The City Council, without the Mayor's approval or recommendation, has caused these Articles of Impeachment to be filed pursuant to the authority granted in §110.170 of the City Code and the laws of the State of Missouri cited herein:

ARTICLE I

The City of Waynesville, Missouri alleges that Mayor Brown has engaged in conduct constituting malfeasance in office. Specifically:

- A. Despite the clear prohibition in the City Ordinances against such conduct the Mayor has repeatedly given orders and directions to city employees subordinate to the City Administrator.
- B. Despite the clear prohibition in the City Ordinances the Mayor directly ordered the City Administrator to interview a candidate for a position of employment even though that candidate had not even applied for the job.
- C. Despite the clear prohibition in the City Ordinances, the Mayor directly ordered the City Administrator to fire the public works director.
- D. The Mayor has created a hostile and threatening work environment.
- E. Despite the clear prohibition in the City Ordinance, the Mayor has repeatedly attempted to interfere with the day-to-day activities of the City and to undermine the City Administrator form of government.

The actions alleged in Article I have no reasonable justification, are outside of the scope of Mayor Brown's authority and constitute violations of §§116.050(D) and/or 100.050 (C), (N), (O), and/or (P) of the City Code of the Waynesville, Missouri. Such actions further amount to malfeasance on the part of Mayor Brown and show a conscious disregard for the proper order

and discipline of the City of Waynesville, Missouri, its Code, and the laws of the State of Missouri as they relate to the conduct of government. This malfeasance relates directly to the administration of the office of Mayor Brown. The actions further show that Mayor Brown is not suited to hold public office, and is an inadequate steward of the duties of the Mayor of the City of Waynesville and the trust placed in him by the citizens of the City of Waynesville, Missouri.

ARTICLE II

The City of Waynesville, Missouri alleges that Mayor Brown has engaged in conduct constituting misfeasance and/or nonfeasance in office. Specifically:

- A. The Mayor has failed to uphold and enforce the Ordinances of the City of Waynesville.
- B. The Mayor has been rude, disrespectful, and threatening in his conduct toward the employees of the City, including, but not limited to, the City Administrator.

Mayor Brown's conduct, detailed above, shows a conscious disregard for the duties he owes under his oath of office. Such actions further amount to malfeasance and or nonfeasance on the part of Mayor Brown and show a conscious disregard for the proper order and discipline of the City of Waynesville, Missouri, its Code, and the laws of the State of Missouri as they relate to the conduct of government. This malfeasance and/or nonfeasance relates directly to the administration of the office of Mayor Brown. The actions further show that Mayor Brown is not suited to hold public office and is an inadequate steward of the duties of the Mayor of the City of Waynesville and the trust placed in him by the citizens of the City of Waynesville, Missouri.

ARTICLE III

The conduct described herein and adduced in evidence in **ARTICLE I** and **ARTICLE II** constitute not only misfeasance, malfeasance, and or nonfeasance on the part of Mayor Brown

but also a failure or failures to faithfully demean himself in office under the *Wymore* holding. His actions further establish that Mayor Brown acted is not suited to hold public office, and is an inadequate steward of the duties to the City of Waynesville and the trust placed in him by the citizens of the City of Waynesville, Missouri.

ARTICLE IV

The City of Waynesville, Missouri alleges that Mayor Brown, based on the facts alleged herein, is mentally unfit and unable to perform the duties of his office.

WHEREFORE, the City of Waynesville, Missouri requests that the Court of Impeachment impeach Mayor Jerry Brown on the Articles contained herein, each separately and together, issue findings of fact and conclusions of law consistent with and supporting the impeachment, and, upon the conviction on one or more **ARTICLES**, remove him from office, or such other discipline or action as the Court of Impeachment may find just and necessary.

Date: August 29, 2022

**FOR THE CITY OF
WAYNESVILLE, MISSOURI**



Jeffrey W. Deane 50698
Nathan M. Nickolaus 35536
Lauber Municipal Law, LLC
250 NE Tudor Road
Lee's Summit, MO 64086
(816)525-7881
JDeane@laubermunicipal.com
NNickolaus@laubermunicipal.com
SPECIAL PROSECUTORS

CERTIFICATE OF SERVICE

On this **29th** day of **August, 2022**, the undersigned hereby certifies that a copy of the above and foregoing,

_____ was hand delivered to the Respondent, and

a copy was mailed via first class postage prepaid United States Mail to the Respondent at his residence of record.

City Clerk