

## **Article XIII. Recall of Elective Officers**

### **Background**

For the first time in the City's history according to Staff research, multiple recall petitions were filed last summer against several Councilmembers and the Mayor. Although Article XIII, Recall of Elective Officers, has been in Norman's Charter for many years, these provisions hadn't really been tested. Now having utilized the provisions in the Charter in an actual recall scenario, Staff identified several things that could be changed to make the process clearer and better. Council amended the CRC's Resolution in November 2020 to add this section to the list of items they wanted the CRC to consider.

Residents do not have a right to recall their City elected officials by statute; rather, only a City's Charter can grant such a right. When dealing with a matter of local concern, courts typically give deference to cities. The City's provisions for recall are summarized below:

Section 1: An elected official is not eligible to be recalled until 6 months from the date of taking office.

Section 2: A petition for recall must contain signatures, names and addresses of 25% of the registered voters qualified to vote for the official proposed to be recalled.

The City Clerk provides the petition and circulators must return it to her within 30 days, not counting Sundays and legal holidays.

Separate petitions for separate elected officials

The top of each page of the petition must provide the reasons for recall.

The City Clerk has 30 days to review petitions and determine whether the signatures are valid and are those of registered voters eligible to vote for the official proposed to be recalled.

Section 3: City Clerk must publish a notice in the newspaper stating the name of the officer(s) whose recall is sought and the time limit for signing the petition. Notice is also mailed to the elected officer(s).

City Clerk must open her office during regular office hours or face possible prosecution.

Section 4: Once a petition is determined to have a sufficient number of signatures, the petition(s) must be presented to City Council, who shall call a recall election.

The only question on the ballot shall be the recall of the officer(s) affected.

In order to be successful, the total number of votes in favor of the recall must be a majority of the votes cast on the issue AND equal a majority of the votes cast in the most previous election for the office in question.

Section 5: Once an official is recalled, a vacancy is declared and filling for the unexpired term of the recalled officer(s). Council shall set filing dates for said election to commence 10 days after the date of the recall vote and lasting until 5 pm on the 11<sup>th</sup> day after the recall vote. The election to fill the vacancy shall be conducted in accordance with state election laws.

Section 6: Once an official is removed by recall, or if he/she resigned while recall proceedings were pending, the official cannot be appointed to any office within one year after such removal or resignation.

There are number of issues Staff identified for improvement while going through the recent recall process:

1. The petition form should be improved to provide more data points that will assist in matching voter signatures to voter registrations.
2. Thirty days is not enough time for the Clerk to review multiple petitions at the same time, and is likely not sufficient for a recall petition for the office of Mayor, simply because the signature threshold is much higher.
3. Elsewhere in the Charter, 5 votes are required for Council to take action. There should be a limit to the number of officials that can be recalled at one time. If 5 were to be recalled, there would not be enough officials left to call an election to replace the recalled officials.
4. Section 4 could be clarified that the question of recall should be the only *City* question on the ballot. In odd-numbered years in particular, election dates are already very limited by State law. An additional concern is the ability of Councilmembers who are the subject of recall to avoid recall simply by calling elections for other municipal issues on available dates.
5. The timing for declaring a vacancy and setting a filing period should be revised to match more closely to state law and to address the issue of whether an election is needed if the recall election occurs too closely to the regular election or the end of the term for the same seat. For example, in the most recent experience, odd-numbered ward representatives were already scheduled for the regular municipal election in February. If the recall election had been set on March 2, 2021 (the next available date and the only available date in March), then the election to fill the vacancy under state law could not have occurred until May 11, 2021 for a term that ends on July 6, 2021. If more than two candidates ran and no one garnered a majority of the vote, the earliest possible date for a runoff election would have been on July 13, 2021, after the term for which the official was being elected had expired.

While in the middle of a multiple day hearing of petition sufficiency in one of the local recall petitions on January 26, 2021, the Oklahoma Supreme Court issued its opinion in *In re: Petition to Recall Ward Three City Comm'r Ezzell*, 2021 OK 5. In the *Ezzell* case, the Supreme Court considered the extent to which other state statutory provisions may be applicable to local recall processes. The Court ultimately held that the same general procedure that applies to initiative and referendum should also control municipal recall elections.

State law related to initiative and referendum petitions are found in Title 34 of the Oklahoma Statutes. 34 O.S. §§1 and 2 sets forth the form for referendum and initiative petitions respectively. The form recently changed, effective November 1, 2020, to include more data points to assist with matching names on the petition with names in the voter registration database. The Charter currently doesn't set forth the form of the petition; it simply states that the petition form will be provided by the City Clerk. The form has already been updated to follow as closely as possible the referendum petition form provided by state statute because one of our goals was to include more data points to assist with matching signatures. The forms are put together in a pamphlet and include a warning related to fraudulent signatures, the gist of the proposition on the signature page, and an affidavit to be signed by each petition's circulator, all as required for initiative and referendum petitions under 34 O.S. §§3, 6. A copy of the form is attached for your reference.

34 O.S. §6.1 sets forth signatures that must be excluded from the total count by the Secretary of State when making a verification and count of the number of signatures on initiative and referendum petitions. Excluded signatures include:

1. All signatures on any sheet of any petition not verified by the circulator
2. All signatures of nonresidents
3. All signatures on a sheet that is not attached to a copy of the petition pamphlet
4. All multiple signatures on any printed signature line
5. All signatures not a printed signature line
6. Those signatures by a person who signs with any name other than his or her own, or signs more than once
7. All signatures of any sheet on which a notary has failed to sign, the seal of the notary is absent, the commission of the notary has expired or the expiration date is not on the signature sheet
8. Any signatures that cannot be verified by the Secretary of State with the Oklahoma State Election Board's public voter registration records. (Remember, the proscribed form states that at least 3 data points must be matched).

34 O.S. §17 requires publication of initiative and referendum measures not less than 5 business days before any election is held on such a measure, a copy of the ballot and an explanation of how to vote for or against the measure. This would be a simple requirement to implement for a recall petition. It would simply read: "On \_\_\_\_\_, 2021, voters of Ward \_\_\_\_/Norman will have an opportunity to vote on the following question: Should Councilmember/Mayor \_\_\_\_\_ be recalled? A yes vote means you would like he/she to be recalled and no longer serve in office and a no vote means you would like he/she to retain his/her office."

## **Areas of the Charter to Consider for Modification**

### Section 1 – Time of commencing proceedings

None

### Section 2 – Filing of Petition; Validation of Signatures

Should we continue to require a statement of the reasons for which recall is sought at the top of each page of the petition?

Consider adding language that the petition provided by the Clerk shall be substantially similar to the form provided by State law for initiative and referendum petitions

Should the 30-day time period within which to return the petition be changed and/or should it continue to exclude Sundays and legal holidays?

The City's Clerk's inspection is required to be done in 30 days and makes no exclusions. Should more time be given if multiple petitions or for Mayoral recall? The Secretary of State's administrative rules for counting signatures includes the following process:

- Notify the proponent(s) of the specific date, time and location for the signature count
- Secretary of State trains counters
- Proponent(s) can provide an observer for the counting process
- Physical Count:
  - o Petitions are detached from signature sheets
  - o A physical count of the signatures is done
  - o Signature sheets are consecutively numbered
  - o Signature sheets and one (1) printed copy of the petition are bound in consecutively numbered volumes, which include a cover sheet showing the volume number, purported number of signature sheets, the series of numbers assigned to the signature sheets and the total number of signatures counted for that volume

NOTE: In this recent process, it appeared that we didn't receive the same information that the State is given as the database was much more tedious to search and in the format provided, only one person could use it at a time.

Clarify the information used to validate signatures to align with the data points in the new form, and with 34 O.S. §6.1 above.

### Section 3 – Notice and publication

Consider adding a requirement to publish notice as set out above in line with 34 O.S. §17.

Section 4 – Calling election; votes required for recall

Consider clarifying that it must be the only City issue on the ballot

Consider limiting the number of officers that may be recalled at any one time (never more than 4) to avoid quorum issues

Consider ways to avoid a situation where Council can call elections on other issues to avoid a recall election

Section 5 – Election to fill vacancy created by recall

Update time frames to coincide with state law.

Consider whether language could be added to avoid a situation where the recall election and/or the election to fill the vacancy occurs after the recalled official's term would've ended anyway.

Section 6- Reappointment prohibited after removal.

None

The CRC discussed these issues at length at its meeting of April 19, 2021 and asked Staff to draft language that was responsive to the discussion. Changes to each section as discussed by the CRC is provided below, along with a summary of the discussion. The language below was adopted during its May 2021 meeting.

**Recommended Language:**

**Section 1. - Time of commencing proceedings.**

[The CRC discussed whether the limit on recall proceedings during the first 6 months of service is reasonable, and whether allowing a Councilmember to be recalled later in the term, when an election for the next term is already scheduled is prudent. Staff was directed to draft language that would allow an elected official to be removed via recall at any time after six months from the date of accession to six months prior to the end of the term, thus avoiding a potential situation where recall and regular municipal elections for the same office are happening in back to back months.]

The holder of any elective office, either by election or appointment to fill a vacancy, may be removed at any time during the time period beginning after six months from the date of his accession to said office and ending six months prior to the expiration of the current term of the elected official so subject to recall, by the registered voters qualified to vote for a successor to such incumbent, in the following manner:

## **Section 2. - Filing of petition; validation of signatures.**

[The CRC expressed support for incorporating a reference to State law for petition form in response to the *Ezzell* case mentioned previously. Some members of the CRC expressed reservations about requiring a reason for recall on each petition; however, to the extent the *Ezzell* case requires that we follow state law as closely as possible, it would appear a gist of some kind would be required on each petition page. Some members expressed concern that the sufficiency of the gist could become a point of contention and result in otherwise valid petitions being thrown out, similar to initiative and referendum petitions. Staff has attempted to draft language that would comply with State law but provide a more standardized gist, particularly since the “gist” of a recall petition is less nuanced than many subjects of initiative and referendum petitions. The CRC also discussed whether 30 days is sufficient for the clerk to review petitions, particularly when multiple petitions are filed. While members recognized the need to review petitions expeditiously, they also recognized the challenge multiple petitions present in terms of time to review. It was suggested that Staff draft language that would allow no more than 30 days to review one petition for a ward representative, no more than 60 days to review a petition for the Mayor (simply because the signature threshold is much higher), and 90 days if multiple petitions were received. Because of the concerns expressed during the discussion about Section 1 related to potential recall elections occurring back to back with regular municipal elections for the same office, Staff was asked to run through several timing scenarios. A table is attached looking at a few different scenarios.]

A petition bearing the signatures, names and addresses of twenty-five per cent (25%) of the registered voters qualified to vote for the officer whose recall is sought, shall be necessary to initiate recall proceedings. The City Clerk shall maintain on file and for public use proper petition forms that are in substantial conformance with the form provided in State law for referendum petitions to initiate such proceedings.

At the top of each page of said petition(s) there shall be a ~~short-simple~~ statement of the ~~reasons for which recall is being sought.~~ gist of the recall proposition: “If successful, this petition will allow the voters to decide whether to recall [insert elected officer] prior to the expiration of his/her term, or allow he/she to continue to serve in office.”

The petition must be returned to the City Clerk within thirty (30) days, Sundays and legal holidays excepted, of its initiation in order to be valid. Failure to return the petition(s) within the proper time limits shall render them null and void.

Upon receipt of the petition(s), the City Clerk shall inspect said petition(s) to see that all the signatures are valid and that they are those of registered voters eligible to vote for the office from which the officer's removal is sought. Such inspection by the City Clerk shall be completed in a reasonable amount of time, not to exceed ~~not more than~~ thirty (30) days for one petition to recall a ward representative, sixty (60) days for a petition to recall the Mayor, and ninety (90) days if multiple petitions are undergoing inspection concurrently.

### Recall Petition Timing Scenarios

| <b>Date Signed<br/>Petition Submitted<br/>to Clerk</b> | <b>Ward or Mayor</b> | <b>Minimum Number<br/>of Signatures<br/>Required</b> | <b>30 day review</b> | <b>60 day review</b> | <b>90 day review</b> |
|--|----------------------|--|----------------------|----------------------|----------------------|
| August 14, 2020*                                       | Ward 3               | 2,573  | September 14, 2020   | October 14, 2020     | November 13, 2020    |
| August 14, 2020*                                       | Mayor                | 18,154   | September 14, 2020   | October 14, 2020     | November 13, 2020    |
| January 6, 2021**                                      | Odd # Ward           | 2,100 (avg.)   | February 5, 2021     | March 7, 2021        | April 6, 2021        |
| February 7,<br>2021***                                 | Even # Ward          | 2,400 (avg.)   | March 9, 2021        | April 8, 2021        | May 8, 2021          |

\* Actual petitions received in 2020.

\*\* If a petition were filed 6 months prior to end of term.

\*\*\* First opportunity to file petition for new Councilmembers sworn in on July 7, 2020.

| <b>Available Election Dates</b> | <b>Filing Date Options</b>             | <b>Notice to Election Board</b>                     |
|---------------------------------|--|---|
| November 3, 2020                | 8/24/20 – 8/26/20<br>8/31/20 – 9/2/20  | August 19, 2020 (75 days because of State election) |
| February 9, 2021                | 12/14/20 – 12/16/20                    | December 10, 2020                                   |
| April 6, 2021                   | 2/8/21 – 2/10/21<br>2/15/21 – 2/17/21  | February 4, 2021                                    |
| September 14, 2021              | 7/19/21 – 7/21/21                      | July 15, 2021                                       |
| November 9, 2021                | 9/13/21 – 9/15/21<br>9/20/21 – 9/22/21 | September 9, 2021                                   |

### **Section 3. – Notice and publication.**

[CRC members reviewed the current notice requirements in the Charter as well as notice requirements in 34 O.S. §17, which is arguably implicated in the *Ezzell* decision. Staff was asked to draft language that would reference state statute rather than mimic the statutory language to ensure the Charter provision doesn't have to be amended every time State law changes.]

The City Clerk shall cause to be published upon the filing of the said petition with the City Clerk's office, in some newspaper of general circulation in the City of Norman a notice to the voters, stating the name of the officer(s) whose recall is sought and the time limit within which said petition(s) must be signed. Further, the City Clerk shall cause to be mailed to the officer(s) whose recall is sought an official notice that the petition has been commenced and the time limit in which it must be completed. Such notice shall be by certified mail, return receipt requested, and the refusal of the officer(s) to accept delivery shall in no way affect the validity of the notice. Failure of the City Clerk to keep the City Clerk's office open during regular office hours, which failure prevents the proper filing of said petition(s), shall be adjudged a misdemeanor and upon conviction thereof the Clerk shall be punished by a fine of not less than ten dollars and not more than fifty dollars, and each day said City Clerk violates the provisions hereof shall constitute a separate and distinct offense. In the event such a failure on the part of the City Clerk occurs, petitioners may file the petition(s) with the City Manager.

In addition to publishing notice upon receipt of a petition, the City Clerk shall also publish notice in advance of any recall election in accordance with Title 34, Section 17 of the Oklahoma Statutes.

### **Section 4. – Calling election; votes required for recall.**

[The CRC discussed the practical limits to scheduling an election where the question of recall is the only question on the ballot. There was consensus to remove this language. Additionally, the challenge posed by the potential for a successful recall election of 5 of the 9 Councilmembers was discussed. Article XI, Section 1 of the Charter requires the affirmative vote of five (5) members to adopt any motion, resolution or ordinance, or pass any measure, meaning a successful recall of five Councilmembers would result in an insufficient number of Councilmembers to take any action at all, including calling an election to replace the recalled Councilmembers. The CRC asked Staff to draft language that would provide for an exception to Article XI, Section 1 if more than four Councilmembers are recalled.]

Upon determination by the City Clerk that the petition(s) bear the signatures of the requisite number of registered voters, said petition(s) shall be presented by the City Clerk to the City Council which body shall, in accordance with state election laws, call a recall election.

~~The sole question in said election shall be the recall of the officer(s) affected.~~ The recall shall be adopted when the total number of votes in favor of the recall is a majority of all the votes cast on the issue and that majority equals a majority of all the votes cast in the most recent previous election for the particular office in question. Should more than four Councilmembers be recalled in the same recall election, then an affirmative vote of a majority of the remaining seated



Councilmembers shall be sufficient to take any action until the vacancies resulting from the recall are filled as set forth herein.

**Section 5. – Election to fill vacancy created by recall.**

In the event the recall is adopted, a vacancy shall be declared and an election shall be called for the next available election date in accordance with state election laws. ~~it shall be filled in the following manner for the unexpired term of the recalled officer(s): the City Council shall set filing for an election to fill the vacancy to commence ten (10) days after the date of the recall vote and last until 5:00 p.m. of the eleventh (11th) day after the recall election.~~ Qualification to be a candidate shall be as for a regular election as set out in Article II. ~~The election to fill the vacancy created by the recall shall be set in accordance with state election laws.~~ Election shall be by a plurality of the votes cast and shall be certified in the regular manner.