

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE REQUESTING THE INTRODUCTION OF A LOCAL BILL AMENDING THE CITY CHARTER TO PROVIDE FOR RECALL ELECTIONS

WHEREAS, the general laws of North Carolina do not provide a recall procedure for local elected officials; and

WHEREAS, a number of municipalities have been granted the authority to hold recall elections by local legislation of the General Assembly; and

WHEREAS, the City of Fayetteville wishes to have a recall procedure in place that will allow its citizens an opportunity to address any serious concerns that may arise between regular City elections with regard to allegations of misfeasance, malfeasance, nonfeasance, or a violation of the oath of office; and

WHEREAS, the establishment of a recall procedure would allow the citizens to have an active voice in addressing any such concerns and would authorize the City to respond to the will of the people.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fayetteville that the Council does support and request the introduction of a local bill amending the City Charter, Chapter 557, Session Law of 1979, as amended, by adding a new section to Chapter IV, Elections, to read as follows:

Sec. 4.4. Recall of Elected Officials.

- (a) The Mayor or any member of the City Council of the City of Fayetteville may be removed from office in the manner provided for in this section.
- (b) A recall petition committee may file an affidavit with the Director of the Cumberland County Board of Elections containing the name of the elected official whose removal is sought and a general statement of the grounds alleged for removal. The grounds for recall must be for allegations of misfeasance, malfeasance, nonfeasance, or a violation of the oath of office. The Director of the Board of Elections shall provide the recall petition committee filing the affidavit with petition forms for demanding the removal of a City elected official. The petition forms shall (i) be signed by the Director of the Board of Elections; (ii) be dated on the date of issuance; (iii) be addressed to the Cumberland County Board of Elections; (iv) contain the name of the persons to whom the forms are issued; (v) contain the name of the elected official whose removal is sought; (vi) contain a general statement of the grounds on which the removal is sought; and (vii) provide a place for signatures. The Director of the Board of Elections shall promptly deliver a copy of the petition issued by the Director of the Board of Elections to the City Clerk, who shall enter the copy of the petition in a record book kept for that purpose. The record book shall be maintained at the Office of the City Clerk.

- (c) A recall petition committee authorized under subsection (b) of this section shall be comprised of at least five members who are registered voters within the City and who shall represent the signers of the petition. Each member of the recall petition committee shall sign the petition and shall be responsible for circulating the petition within the City limits and for assembling and returning the petition to the Board of Elections as required by subsection (d) of this section.
- (d) A recall petition to be effective must be returned to the Board of Elections within 30 days after the filing of the affidavit. To be sufficient, a recall petition must bear the signatures of at least fifteen percent (15%) of the registered voters of the City if the recall is for the Mayor or fifteen percent (15%) of the registered voters in the district in which the Council member serves as shown by the registration records of the last preceding general municipal election.
- (e) The signatures to the petition need not all be appended to one paper. Each signer shall add his or her signature and place of residence, giving the complete street name, street number, and town.
- (f) The Board of Elections shall investigate the sufficiency of any petition and certify the results of the investigation to the City Council. The Board of Elections may employ persons as it deems necessary to undertake that investigation. The City Council shall reimburse the Board of Elections for the reasonable cost of the investigation. The Board of Elections may adopt rules concerning the validation of signatures appearing on the recall petition.
- (g) The Board of Elections shall complete its investigation and issue its certification of the results of the investigation within 10 days after the filing of any petition. However, the Board of Elections shall not be obligated to conduct an investigation in any 30-day period immediately preceding or in any 10-day period immediately following a county-wide election. If, by the Board of Elections' certification, the petition is shown to be insufficient, it may be amended within 10 days from the date of the certificate. The Board of Elections shall, within 10 days after any amendment, complete an investigation of the amended petition. If the certification of the results of the investigation shows the amended petition to be insufficient, a copy of the petition shall be returned to the recall petition committee filing the petition, without prejudice to the filing of a new petition.
- (h) Upon a determination that a sufficient recall petition has been submitted, the Board of Elections shall submit the petition to the City Clerk, who shall submit it to the City Council and shall notify the elected official whose removal is sought. If the elected official whose removal is sought does not resign within five days after receiving the notice, the City Council shall order and fix a date for holding a recall election. Subject to the remaining provisions of this section, an election shall be held not less than 60 nor more than 90 days after the petition has been certified as being sufficient. If any other general or special election is scheduled within this period, the City Council shall schedule the special election at the same time. If the provisions of general law prohibit the holding

of a special election during this time period and no general or special election is otherwise scheduled during that period of time, then the City Council shall schedule the special recall election for a date within 10 days after the last day of the period of time during which special elections are prohibited by general law.

- (i) The Board of Elections shall cause legal notice of the election to be published. That notice shall include the general statement of the grounds on which the recall is sought as alleged in the affidavit and shall make all arrangements for holding the election in accordance with general law. The recall election shall be conducted, returned, and the results declared as in other elections in the City of Fayetteville. The City shall reimburse the reasonable costs of the recall election to the Board of Elections.
- (j) The question of recalling any number of elected officials may be submitted at the same election. However, as to each individual elected official, a separate petition shall be filed and there shall be an entirely separate ballot.
- (k) The ballots used in a recall election shall submit the following proposition:

FOR AGAINST

The recall of (name and title of elected official).

- (l) If less than a majority of the votes cast on the question of recalling an elected official are for recall, the elected official shall continue in office for the remainder of the unexpired term and, except as provided by subsection (n) of this section, shall be subject to recall as before. If a majority of the votes are for the recall of the elected official designated on the ballot, the elected official shall, regardless of any defects in the recall petition, be deemed removed from office on the date the Board of Elections certifies the results of the recall election.
- (m) If an elected official concerning whom a sufficient recall petition is submitted to the City Council resigns before the recall election or is removed from office as a result of the recall election, the vacancy shall be filled in the manner provided by Section 4.1 or Section 4.2 of this Charter for filling vacancies in that office, except as provided in subsection (o) of this section. An elected official who resigns after a sufficient petition for his or her recall has been submitted to the City Council or who is removed from office by the voters as a result of a recall election shall not be appointed to fill the vacancy caused by that elected official's own resignation or removal.
- (n) No recall petition shall be filed in accordance with subsection (d) of this section against an elected official who has been subjected to a recall election, and not removed thereby, until at least six months after that recall election. No recall petition shall be filed in accordance with subsection (d) of this section against an elected official during the first three months of the term of that office or during the six months before the expiration of the term of that office.

- (o) If the recall of two or more members of the City Council or the recall of the Mayor and one or more members of the City Council are effected at a single recall election, the successors of the elected officials recalled shall be elected by the registered voters of the City at a special municipal election, and the successors shall serve for the remainder of the terms of the elected officials recalled. The members of the City Council who have not been recalled shall call that special election, which shall be conducted by the Cumberland County Board of Elections under the laws then governing elections in the State. If the recall of all or a majority of the members of the City Council is effected at a single election, they shall continue in office for the purpose, and only for the purpose, of calling a special municipal election for the election of their successors as provided in this section. That election shall also be conducted by the Cumberland County Board of Elections under the laws then governing elections in the State. The City shall reimburse the reasonable costs of the recall election to the Cumberland County Board of Elections.

AND BE IT FURTHER RESOLVED that copies of this resolution be sent to Representatives Elmer Floyd, Marvin W. Lucas, William O. Richardson, and John Szoka and Senators Ben Clark and Kirk deViere.

ADOPTED this 14th day of January 2019.

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk