

Durham

Sec. 15. - Removal of elective officers from office.

- (1) Absence from 5 consecutive regular meetings shall operate to vacate the seat of a councilmember, unless the absence is excused by the council by resolution setting forth the reason therefor, and such resolution shall be entered upon the minutes.
- (2) The city council by a vote of 4 of its members, in meeting assembled, shall have power to remove from office the mayor or any councilmember for misfeasance, malfeasance, corruption, neglect of duty or other misconduct in office, but the person to be proceeded against shall have at least ten days' notice in writing of the motion to remove him, accompanied by a copy of the charges alleged as the grounds for his proposed removal. He shall have the right to be heard in person or by counsel in his defense. In case of the removal of the mayor, or any councilmember, the vacancy shall be filled by the city council or the remaining members thereof.
- (3) The mayor or any member of the city council may also be removed from office in the following manner:
 - (a) Any elector of the city may make and file with the Supervisor of Election of the Board of Elections of Durham County an affidavit containing the name of the City officer whose removal is sought and a statement of the grounds alleged for his removal. The said supervisor of elections shall thereupon deliver to the elector making such affidavit copies of petition blanks for demanding such a removal, printed forms of which the supervisor of elections shall keep on hand. Such blanks shall be issued by the supervisor of elections with his or her signature thereto attached and shall be dated and addressed to the Board of Elections of Durham County, indicate the person to whom issued, and state the name of the officer whose removal is sought. A copy of the petition shall be promptly delivered to the city clerk who shall enter the copy of the petition in a record book kept for that purpose in the office of the clerk. A recall petition to be effective must be returned and filed with the supervisor of elections within 30 days after the filing of the affidavit, and to be sufficient must bear the signature of registered voters of the city equal in number to 25 percent of the registered voters of the city as shown by the registration records of the last preceding general municipal election.
 - (a1) It shall be the duty of the Board of Elections of Durham County to investigate the sufficiency of any such petition and to certify the results of such investigation to the city council. The board of elections may employ such persons as it deems necessary to undertake such investigation and the reasonable cost of such investigation shall be reimbursed to the board of elections by the city. The board of elections may adopt such rules and regulations as it deems necessary or advisable concerning the validation of signatures appearing on the recall petition, and such rules and regulations shall be available for public inspection consistent with G.S. ch. 132.
 - (b) If a recall petition shall be certified by the board of elections to be sufficient, the board shall at once submit it to the council with its certificate to that effect and shall notify the officer whose removal is sought of such action. If the officer whose removal is sought does not resign within 5 days after such notice the council shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than 50 nor more than 70 days after the petition has been certified to the council, and it may be held at the same time as any other general or special election within such period; but if no other election is to be held within such period the council shall call a special recall election to be held within the time aforesaid, provided however, if the provisions of general law prohibit the holding of special elections during the time aforesaid, and no general or special election is otherwise scheduled during said period of time, then the council shall call said special recall election for some date within ten days after the last day of said period of time during which special elections are prohibited by general law.
 - (c) The question of recalling any number of officers may be submitted at the same election but, as to each such officer, a separate petition shall be filed and there shall be an entirely separate ballot.
 - (d) The ballots used in a recall election shall submit the following propositions in the order indicated:

- ☐ For the recall of (name of officer).
- ☐ Against the recall of (name of officer).

Except that the spaces left for the name and date shall be filled by the correct names and date, the ballots used in a recall election shall be in form substantially as follows:

RECALL ELECTION

City of Durham

_____ (month and day of month) _____ 20 _____

For the recall of _____

Against the recall of _____

- (e) If a majority of the votes cast on the question of recalling an officer be against his recall he shall continue in office for the remainder of the unexpired term, but subject to the recall as before. If a majority of such votes be for the recall of the officer designated on the ballot he shall, regardless of any defects in the recall petition, be deemed removed from office.
- (f) If an officer in regard to whom a sufficient recall petition is submitted to the board of elections shall resign before the election, or be removed as a result thereof, the vacancy so caused shall be filled in the manner provided by this charter for filling vacancies in such office, except as provided in section 15(3)(h). But an officer removed by the voters as the result of a recall election, or resigning after a sufficient petition for his recall has been submitted to the board of elections shall not be reelected to fill the vacancy caused by his own removal or resignation.
- (g) No recall petition shall be filed against an officer within 3 months after he takes office, nor, in case of an officer subjected to a recall election and not removed thereby, until at least 6 months after that election.
- (h) If the recall of a majority of the members of the city council, including the mayor as one of the members, shall be effected at a single recall election, the successors of the officers recalled shall be elected by the registered, qualified voters of the city at a special municipal election, and said successors shall serve for the unexpired part of the terms of the officers recalled. The members of the city council who have not been recalled are empowered to call said special election and to make all necessary provisions regarding the same in conformity to the constitution and general laws of North Carolina. If the recall of all of the members of the city council, including the mayor, shall be effected at a single recall election, they shall be continued in office for the purpose, and only for the purpose, of calling a special municipal election for the election of their successors as above provided, and of ascertaining and declaring the result thereof.

(Acts 1975, ch. 671, § 15; Laws 1987, Ch. 280, §§ 1—4; Ord. No. 12281, § 5, 5-7-2001)