

RECALL OF ELECTED OFFICIALS

§ 169-1.01 Purpose

The purpose of this chapter is to establish the requirements and procedures for citizens seeking to recall elected officials from office.

Commented [MAB1]: This is added to be consistent with the rest of the Code.

§ 169-2 Elected Officials May Be Recalled

Any elected official may be recalled and removed from office by the qualified voters of the Town as ~~herein provided set forth in this chapter~~. Recall is intended to be used when, in the opinion of the number of voters hereinafter specified, an elected official, ~~acting as such~~, has caused a loss of confidence in ~~that the~~ official's judgment or ability to perform the duties and responsibilities of the office.

~~Sec. 1.02~~

§ 169-3 Affidavit, Petition, Preparation and Filing

Any ~~twenty-five (25)~~ qualified voters of the Town may file with the Town Clerk an affidavit containing the name of the official sought to be recalled and a statement of specific facts to support the grounds of ~~the~~ recall. The Town Clerk shall forthwith transmit a copy of such affidavit to the official ~~sought to be recalled who is the subject of the affidavit~~ and to the Town Council. Within ~~five (5)~~ days ~~from after~~ the date of the filing of the affidavit, the Town Clerk shall deliver to the ~~twenty-five (25)~~ voters ~~making such affidavit~~ a sufficient number of copies of petition blanks ~~demanding such for the requested~~ recall. The blanks shall be issued, consecutively numbered and signed by the Town Clerk, who shall set the official seal thereto; they shall be dated and addressed to the Town Council, and shall contain the name of the official sought to be recalled, the grounds of recall as stated in said affidavit, and the names of the ~~persons person~~ to whom issued; ~~and they shall demand the election of the successor to such official.~~ The recall petition shall be returned and filed with the Town Clerk within 30 ~~(thirty)~~ days after issuance of the petition. Said petition, before being returned and filed, shall be signed by registered voters of the Town equal to at least ~~ten (10)~~ % of the number of ~~the~~ votes cast in the Town for Governor in the last gubernatorial election, but in no case less than ~~one hundred (100)~~ voters, and to every signature shall be added the place of residence of the signer. The Town Clerk shall deliver the petition to the Registrar of Voters, and the Registrar of Voters shall within ~~five (5) business~~ days certify thereon the number of signatures which are names of qualified voters of the Town.

Commented [MAB2]: As enacted, the petitioned ordinance likely only applies to the Town Council and Town Clerk, which are the only elected officials mentioned in the Charter. Proposed modifications would be needed if the Council would like to have the ordinance apply to the RSU board members as well.

Commented [MAB3]: This language is removed, as explained below, because it is inconsistent with the Charter's method for filling of vacancies. By statute, the recall of an elected official results in a vacancy in office.

~~Sec. 1.03~~

§ 169-4 Election as to Recall and Public Hearing

If the petition shall be certified to be sufficient by the Town Clerk and the ~~registrar~~ Registrar of ~~voters~~ Voters, the Town Clerk shall allow ~~five (5) business~~ days for the filing of legal challenges to the signatures on the petition. If no such challenges are filed, the Town Clerk shall forthwith certify and submit the petition to the Town Council. The Town Council shall forthwith give

written notice to said official of the receipt of said certificate and, if the official sought to be removed does not resign within five (5) days, shall order an election to be held on a day fixed by them not less than fifty (50) nor more than sixty (60) days after the date of the Town Clerk's certificate that a sufficient petition is filed. If any other Town election is to occur within seventy-five (75) days after the date of said certificate, the Town Council may, at its discretion, postpone the holding of the recall election to the date of such other ~~election~~elections. If a vacancy occurs in said office after a recall election has been so ordered, the election shall nevertheless proceed as in this section provided. If the official sought to be recalled so requests, the Town Council shall make provisions for a public hearing on the matter, said hearing to take place not less than seven (7) days prior to ~~said~~such election.

Sec. 1.04 Nomination

§ 169-5 Replacement of Candidates

~~Any official being recalled. Recalled Officials shall not be a candidate at the recall election. The nomination of candidates, the publication of the warrant for recall election, and the conduct of the same shall be in accordance with the provisions of the laws of the State of Maine relating to elections, unless otherwise provided in this Charter. Nomination petitions for candidates at the recall election shall be filed with the Town Clerk within 15 days after the date of the filing of the certificate of the Town Clerk as to the sufficiency of the recall petition.~~

Sec. 1.05

If a member of the Town Council is recalled, any such vacancy shall be filled in accordance with Article II, Section 2.D of the Town Charter.

§ 169-6 Incumbent to Continue Duties During Recall Process

The incumbent official shall continue to perform the duties of the office until the results of the recall election are certified. If not recalled the official shall continue in office for the remainder of the unexpired term, subject to subsequent recall only as provided in ~~Section 1.07.~~§ 169-8. If recalled in the recall election, the official shall be deemed removed upon the certification of the election results.

Sec. 1.06

§ 169-7 Form of Ballots for Recall

The ballots used in recall elections shall contain a separate question for each official whose recall is sought as follows: "Shall (name of official) be recalled from office?" and shall contain two separate boxes, one for a ~~"yes-yes"~~ vote and one for a ~~"no" vote~~. ~~Under the question there shall appear the word 'CANDIDATES' and the direction 'Vote for One' and beneath this the names of candidates nominated as hereinbefore provided. In the event the recall petition is passed, the candidate receiving the greatest number of votes shall be deemed elected for the balance of the term of the official recalled.~~"no" vote.

Sec. 1.07

§ 169-8 Limitations on Petitions

Commented [MAB4]: This language replaces the enacted ordinance in order to be consistent with the Charter's method for filling vacancies in Town Council. Should this ordinance be amended to include RSU board members, this section would need to be further modified to reference the applicable state statute's method for filling RSU board vacancies.

Commented [MAB5]: This language is removed for the reasons mentioned above regarding the method for filling vacancies under the Charter and applicable statute.

No recall petition shall be filed against an official with fewer than sixty (60) days of term remaining or within three (3) months after such official takes office, nor, in the case of an official subjected to recall election and not removed thereby, until at least three (3) months after that election.

Sec. 1.08 Prohibition Against Appointment of Recalled Officer

~~No person who has been recalled from office or who has resigned from office while recall proceedings are pending shall be appointed to any Town office or Town board, commission or committee within two years after such removal by recall.~~

Sec. 1.09 Validity

~~It is the intention of the municipality that each section of this ordinance shall be deemed independent of all other sections herein, and that, if any provision within this ordinance is declared invalid, all other sections shall remain valid and enforceable.~~

Sec. 1.10 Effective Date

~~This ordinance shall be in full force and effect as soon as the town votes to enact it, and shall repeal and replace all prior Town of Windham recall ordinances.~~

§ 169-9 Calculation of Time

Unless expressly stated to the contrary, all time periods established in this ordinance shall be measured by calendar days.

Commented [MAB6]: Although there are municipalities that have similar provisions in their municipal charters (Town of York and City of Sanford, for example), this is a provision that would be vulnerable to a potential constitutional challenge (First Amendment) and therefore is not recommended. To our knowledge, such a provision has not been tested by litigation in Maine courts, and this could result in a lawsuit against the Town.

Commented [MAB7]: This section is unnecessary because this provision already exists in the overall Code.

Commented [MAB8]: This section is inconsistent with the Charter, which says that petitioned ordinances are effective 10 days after the election; also, there are no prior Windham recall ordinances.

Commented [MAB9]: This is added for the sake of clarity.