

**SECTION 46. LEGISLATION FOR IMPROVEMENTS.**

Whenever the Council is by law required to pass more than one ordinance or resolution to complete legislation necessary to make and pay for any public improvements, the provisions of Section 38 to 47 of this Charter shall apply only to the first ordinance or resolution relating thereto. Ordinances or resolutions providing for the current expenses of the City, or for street improvements petitioned for by a majority of the owners of the property benefited and to be specially assessed for the cost thereof as provided by law, and emergency ordinances or resolutions shall go into immediate effect. Such emergency ordinance or resolution must receive an affirmative vote of four members of the Council, and the reason for such necessity shall be set forth in one section of the ordinance or resolution.

(Amended 11-7-00.)

**SECTION 47. INITIATED ORDINANCES SUBJECT TO REFERENDUM; CONFLICT.**

Ordinances submitted to the Council by initiative petition and passed by the Council without change, or passed in an amended form and not required to be submitted to a vote of the electors by the committee of the petitioners shall be subject to the referendum in the same manner as other ordinances. If the provisions of two or more ordinances adopted or approved at the same election conflict, the ordinance or resolution receiving the highest affirmative vote shall prevail.

**THE RECALL****SECTION 48. APPLICATION.**

(EDITOR'S NOTE: The provisions of Section 48 were repealed on November 7, 2000.)

**SECTION 49. RECALL PROCEDURE.**

The procedure to effect the removal of any elected officer of the City shall be initiated by the filing of a petition, with the Clerk of the Council, demanding that the question of removing such officer or officers be submitted to the electors. Such petition shall be signed by the electors of the Municipality equal in number to at least twenty-five (25) percent of the total number voting at the last regular election of municipal officers in which the office of Mayor is contested but all signatures to such petition need not be appended to one paper.

(Amended 11-7-00.)

**SECTION 50. HOW PROCURED.**

Petition papers shall be procured only from the Clerk of the Council, who shall keep a sufficient number of such blank petitions on file for distribution as herein provided. Prior to the issuance of such petition papers an affidavit shall be made by one or more qualified electors and filed with the Clerk of Council, stating the name of the member or members of the Council, whose removal is sought. The Clerk of the Council, upon issuing any such petition papers to an elector, shall enter in a record, to be kept in his office, the name of the elector to whom issued, the date of such issuance and the number of papers issued and shall certify on each paper the name of the elector to whom issued and the date of issue. No petition paper shall be accepted as part of the petition unless it is so issued and bear such certificate and unless it be filed as provided herein.

## **705.92 Procedure for removal of elective officer by recall.**

Any elective officer of a municipal corporation may be removed from office by the qualified voters of such municipal corporation. The procedure to effect such removal shall be:

(A) A petition signed by qualified electors equal in number to at least fifteen per cent of the total votes cast at the most recent regular municipal election, and demanding the election of a successor to the person sought to be removed, shall be filed with the board of elections. Such petition shall contain a general statement in not more than two hundred words of the grounds upon which the removal of such person is sought. The form, sufficiency, and regularity of any such petition shall be determined as provided in the general election laws.

(B) If the petition is sufficient, and if the person whose removal is sought does not resign within five days after the sufficiency of the petition has been determined, the legislative authority shall thereupon order and fix a day for holding an election to determine the question of the removal of the elective officer, and for the selection of a successor to each officer named in said petition. Such election shall be held not less than thirty nor more than forty days from the time of the finding of the sufficiency of such petition. The election authorities shall publish notice and make all arrangements for holding such election, which shall be conducted and the result thereof returned and declared in all respects as are the results of regular municipal elections.

(C) The nomination of candidates to succeed each officer sought to be removed shall be made, without the intervention of a primary election, by filing with the election authorities, at least twenty days prior to such special election, a petition proposing a person for each such office, signed by electors equal in number to ten per cent of the total votes cast at the most recent regular municipal election for the head of the ticket.

(D) The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there shall be printed on the ballots, the two propositions in the order set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Immediately to the left of the proposition shall be placed a square in which the electors may vote for either of such propositions.

Under each of such questions shall be placed the names of candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed the officer's self.

In any such election, if a majority of the votes cast on the question of removal are affirmative, the person whose removal is sought shall be removed from office upon the announcement of the official canvass of that election, and the candidate receiving the plurality of the votes cast for candidates for that office shall be declared elected. The successor of any person so removed shall hold office during the unexpired term of the successor's predecessor. The question of the removal of any officer shall not be submitted to the electors until such officer has served for at least one year of the term during which he is sought to be recalled. The method of removal provided in this section, is in addition to such other methods as are provided by law. If, at any such recall election, the incumbent whose removal is sought is not recalled, the incumbent shall be repaid the incumbent's actual and legitimate expenses for such election from the treasury of the municipal corporation, but such sum shall not exceed fifty per cent of the sum that the incumbent is by law permitted to expend as a candidate at any regular municipal election.

Effective Date: 08-22-1995

# Chapter

## Advisory Elections, Recall and Removal

**Jon Husted**  
Ohio Secretary of State



2013 Ohio Ballot Questions and Issues Handbook

### **ADVISORY ELECTIONS**

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An advisory election is a non-binding election on a question that municipal officials submit to the electorate to gauge voter attitudes on a particular topic. An advisory election is not intended as a substitute for the election on a municipal ordinance, resolution, charter amendment or other measure. Rather, the advisory election only initially tests the appeal of the proposed legislation, with a second election on the legislation itself to follow, if municipal officials so choose.<sup>1</sup>

#### **A. Authority**

The Supreme Court of Ohio recognized the right of a municipality to hold an advisory election in *State ex rel. Bedford v. Cuyahoga Co. Board of Elections* (1991), 62 Ohio St.3d 17. The Court held that Article XVIII, Section 3 of the Ohio Constitution (commonly referred to as the "home rule" provision) grants a municipality the authority to hold an advisory election, absent a specific prohibition against holding such an election in the municipality's charter, the Ohio Revised Code, or the Ohio Constitution.

Please note that only a municipality may conduct an advisory election; an advisory election may not be held by any other political subdivision (e.g., state,

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<sup>1</sup> *State ex rel. Bedford v. Cuyahoga Cty. Bd. of Elections* (1991), 62 Ohio St.3d 17, 22, 577 N.E.2d 645.

county, township, school district, etc.).

## B. Procedure

When municipal officials certify an advisory question to the board of elections, the board should review the municipality's charter, if it has one, to determine whether the charter prohibits an advisory election. If the charter does not specifically prohibit an advisory election, the board should proceed with the election. If the charter appears to prohibit the advisory election, the board should consult with its legal counsel at the county prosecutor's office.

The heading "Advisory Election" must be placed on the ballot for an advisory election.

## RECALL

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### A. Authority

Recall is the electoral procedure that allows voters to decide whether to remove (recall) a municipal official holding elective office. The use of the recall is significantly limited. First, it is available only in a municipality whose voters have adopted both (1) a form of limited home rule – that is, a charter or one of the plans of government outlined in Chapter 705 of the Revised Code – and (2) the recall process as part of that home rule government.<sup>2</sup>

**Note:** Recall is not available in a statutory municipality or in a limited home rule municipality that has not adopted the recall process.<sup>3</sup> Additionally, recall is not available for state, township or district offices, or for county offices except in a county that has adopted a limited home rule charter that specifically provides for the recall.<sup>4</sup>

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<sup>2</sup> *Lockhart v. Boberek* (1976), 45 Ohio St.2d 292, 345 N.E.2d 71, 74 O.O.2d 461; R.C. 705.91 - 705.92.

<sup>3</sup> *Lockhart v. Boberek* (1976), 45 Ohio St.2d 292, 345 N.E.2d 71, 74 O.O.2d 461.

<sup>4</sup> R.C. 705.92.

Second, even if the voters of a limited home rule municipality have adopted the recall, a question of removing an officer shall not be placed on the ballot until such officer has served for at least one year of the term during which he or she is sought to be recalled.

Unless the municipality's charter provides otherwise, the recall procedure is as set forth in R.C. 705.92. The statutory recall process is initiated by the filing of a valid and sufficient petition. The Secretary of State does not prescribe a petition form pertaining to recall. Rather, the petitioner is responsible for crafting a petition that complies with the provisions of R.C. 705.92(A). For example, the petition must:

1. be signed by qualified electors equal in number to at least 15 percent of the total votes cast at the most recent regular municipal election,
2. demand the election of a successor to the person sought to be removed from office, and
3. contain a general statement in not more than 200 words explaining why the removal of the person is sought.

The petition also must satisfy all other requirements of law and must be filed with the board of elections, which shall verify the sufficiency and validity of the petition.<sup>5</sup>

If the petition is determined to be sufficient, the person whose removal is sought has five days after the sufficiency of the petition has been determined to resign.<sup>6</sup> Unless the municipality's charter provides otherwise, the board of elections that determines the validity and sufficiency of the petition should, as a courtesy, notify the person whose removal is sought of the determination of sufficiency and of the five-day deadline.

If the person does not resign within the five days, the municipal legislative

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<sup>5</sup> R.C. 705.92(A) ("The form, sufficiency, and regularity of any such petition shall be determined as provided in the general election laws.").

<sup>6</sup> R.C. 705.92(B).

authority must order, and set a date for, a special election on the question of the recall and for the selection of a successor. The election must be held not less than 30, and not more than 40 days, after the board of elections determines that the petition is sufficient. The board of elections must make all arrangements for holding the election, which is conducted in the same manner as a regular municipal election.<sup>7</sup>

### **B. Successors**

A petition is required to nominate a candidate to succeed each officer sought to be removed. A nominating petition must be filed with the board of elections at least 20 days before the election and must be signed by voters equal to 10 percent of the total votes cast for the head of the ticket at the most recent regular municipal election. No primary election shall be held.<sup>8</sup>

### **C. Ballot**

The form of the ballot is prescribed in R.C. 705.92(D). The recall question appears on the Official Questions and Issues Ballot and consists of two parts. The first part asks if the municipal officer named in the petition shall be removed from office. The second part sets forth the names of the candidates to fill the vacancy that may be created by the recall. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed the officer's self.

### **D. Results**

If a majority of votes cast are in favor of removal, the person is removed from office upon the announcement of the official canvass. The candidate who receives a plurality of the votes cast for the successor for that office shall be declared elected. The successor shall serve out the remainder of the unexpired term of the person who was removed.<sup>9</sup>

<sup>7</sup> R.C. 705.92(B).

<sup>8</sup> R.C. 705.92(C).

<sup>9</sup> R.C. 705.92(D).

If the person whose removal was sought is not recalled, he or she shall be repaid "actual and legitimate expenses" for the election from the treasury of the municipal corporation. This amount shall not exceed 50 percent of the sum which is by law permitted to be expended by a candidate at any regular municipal election.<sup>10</sup>

## REMOVAL

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### A. General Provisions

The General Provisions of the Revised Code provide that any person holding public office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II of the Ohio Constitution may be removed by judicial action for good cause shown.<sup>11</sup> In order to be removed from office, a public officer must be found guilty by a court of competent jurisdiction of misconduct in office for one or more of the following reasons:

- Willfully and flagrantly exercising authority or power not authorized by law.
- Refusing or willfully neglecting to enforce the law or to perform any official duty imposed upon the public officer by law.
- Gross neglect of duty.
- Gross immorality.
- Drunkenness.
- Misfeasance.
- Malfeasance.
- Nonfeasance.<sup>12</sup>

<sup>10</sup> R.C. 705.92(D).

<sup>11</sup> R.C. 3.07 - 3.10.

<sup>12</sup> R.C. 3.07.



Proceedings for removal on any of these grounds are initiated by the filing of a written complaint that specifically sets forth the charge against the public officer. The complaint must be signed by not less than 15 percent of the total vote cast for the office of governor in the state or subdivision whose officer it is sought to remove. If the public officer sought to be removed is a county sheriff, a county prosecutor, or the mayor of a municipal corporation, the governor may file the written complaint without the signatures of the electors.<sup>13</sup>

**Note:** The Secretary of State does not prescribe any form pertaining to the removal process, which is a judicial proceeding, not an elections matter. A board of elections' responsibility in a removal action is limited to providing the number of signatures required for the complaint.

The complaint is filed with the court of common pleas in the county where the public officer resides. If a complaint is filed against a common pleas court judge, the complaint is filed in the court of appeals of the district where the judge resides. All complaints against state officers are filed in the court of appeals of the district where the officer resides.<sup>14</sup>

If a holder of a public elective office is removed by the court, and the law provides no means for filling the vacancy, the board of elections in the county where the removed officer resides shall order a special election to fill the vacancy in office.<sup>15</sup>

### **B. Additional Provision - Municipal Officer<sup>16</sup>**

Additionally, a judicial complaint can be filed against a municipal officer pursuant to R.C. 733.72. This method for removal is available only when the municipal officer is receiving illegal compensation for services, has a private interest in a city contract, or is guilty of misfeasance or malfeasance in office.

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<sup>13</sup> R.C. 3.08.

<sup>14</sup> R.C. 3.08.

<sup>15</sup> R.C. 3.09.

<sup>16</sup> R.C. 733.72.

The complaint is filed with the probate judge of the county in which the municipality or the larger portion the municipality is located.

If the charges in the complaint are sustained at trial, the judge will make an order removing the officer from office, and forthwith transmit a certified copy of the order to the presiding officer of the legislative authority of the municipality, whereupon the vacancy shall be filled as provided by law.<sup>17</sup>

If the vacancy is filled by appointment, the municipal appointing authority shall immediately, but no later than seven days after making the appointment, certify it to the board of elections and to the Secretary of State. The board of elections shall issue a certificate of appointment to the appointee.<sup>18</sup>

<sup>17</sup> R.C. 733.76.

<sup>18</sup> R.C. 3.02(B).

Only candidates for Council may file a Local Candidate Waiver form, if they meet the three requirements.

CITY OF EAST CLEVELAND  
MISCELLANEOUS NOTES

CHARTER ADOPTED: 6/6/16  
CHARTER EFFECTIVE: 1/1/18  
BALLOT TYPE: NON PARTISAN

Note: (Partisan Primary for Mayor only)

CITY POPULATION 2010: 17,843  
VOTE FOR GOVERNOR 2010: 4,875  
VOTE TOTAL-MUNICIPAL ELECTION 2011: 4,526  
VOTE TOTAL-GENERAL ELECTION 2012: 9,090

TOTAL BALLOTS CAST GENERAL 2011

City Wide	4,526
Ward 2	1,171
Ward 3	1,535
Ward 4	1,820

INCUMBENTS IN OFFICES TO BE ELECTED IN 2013:

Mayor	Gary Norton
Council at Large	Joy A. Jordan
Council At Large	Nathaniel Martin
Council Ward 3	Chantelle Lewis

PRIMARY ELECTION

Party Primary held only if:

Two or more candidates from the same party file for Mayor.

**CITY OF EAST CLEVELAND**  
**Partisan Primary for Mayor October 1, 2013 (5th Tuesday before General)**  
 (No primary for Council)

PETITION NUMBER: 229B (MAYOR)

LAST FILING DATE: July 3, 2013 - 4:00 p.m. (90 Days before Primary)

**CANDIDATES CANNOT CIRCULATE A PETITION BEFORE JUNE 13TH** (110 days before the Primary)

PETITION NUMBER: 230B (COUNCIL)

LAST FILING DATE: AUGUST 7, 2013 - 4:00 P.M. (90 days before General Election)

**CANDIDATES CANNOT CIRCULATE A PETITION BEFORE JULY 18<sup>TH</sup>.** (110 days before the General)

FILING FEE: \$20.00 + \$25.00 OEC Fee = Total Fee \$45.00

ELECTED OFFICES				NO. OF SIGNATURES
POSITION and NUMBER IN OFFICE	TERM LENGTH	ELECT 2013	NOT LESS THAN 2% OF # VOTING AT LAST REGULAR MUNICIPAL ELECTION (all offices – use city wide vote totals)	
1 For Mayor	4 Years	Yes	Min. 91 - Max. 273	
2 For Member of Council at Large	4 Years	Yes (2)	Min. 91 - Max. 273	
1 For Member of Council Ward 2	4 Years	No	Min. - Max.	
1 For Member of Council Ward 3	4 Years	Yes	Min. 31- Max. 93	
1 For Member of Council Ward 4	4 Years	No	Min. - Max.	

**IMPORTANT CIRCULATION AND FILING NOTES:**

1. Candidates cannot circulate a petition prior to 110 days before the respective election.
  - A. Mayoral candidates cannot circulate a petition prior to June 13, 2013
  - B. Council candidates cannot circulate a petition prior to July 18, 2013.
2. Each city wide petition must contain a committee of three electors of the city; each ward council petition must contain a committee of three electors of the ward.
3. An elector can only sign one petition for each seat to be filled.
4. Candidates must date and sign WRITTEN ACCEPTANCE on back of at least one part petition.
5. City Charter does not permit write-ins.

**DATES TERMS COMMENCE**

All city office terms commence on January 1

**Designated school district and municipal court district**

East Cleveland City School District

East Cleveland Municipal Court

# Recalls

Tuesday, 6/10/14

9:03 AM

- **Eligible Municipalities:**
  - Adopted plans of government: Commission, Chartered, Federal plan, city manager plan, etc. (any form outlined ORC 705)
  - A municipality that has officially adopted the process by legislative authority
- **Ineligible:**
  - Statutory municipality
  - Muni that has not adopted recall process
  - School Board Members

## **Process –ORC 705.92 :**

- **Petition:**
  - signed by at least 15% total votes cast in last reg. municipal election.
  - Petition must demand election of a successor to the person being removed
  - Petition must contain an explanation no longer than 200 words why the recall is sought
- **If petitions are deemed valid by the BOE:**
  - Office holder in question has five (5) days after deemed sufficient by the BOE to resign. If no resignation, an election date is scheduled.
    - Notice given to candidate of the 5 days unless specified by Charter
  - Election is to be held *no less than 30 days, not more than 40 days* from the petition is validated sufficient by BOE.

## **Successors:**

- **Petition**
  - Filing deadline: 20 days before the election
  - Signatures: "10% of the total votes cast for the **head of the ticket** at the last municipal election."

## **Ballot:**

- ORC 705.92 (D):

"Shall (name of person) be removed from the office of (name of office) by recall?"

- "For the recall of (name of person)."
- "Against the recall of (name of person)."

\*\*\*Directly below this question, names of qualified candidates are to be listed. The name of the officer up for removal shall not be listed as a candidate.

**Results:**

- In favor of removal: effective at the time of the announcement of the Official Canvass
  - Candidate who hold plurality of votes is declared the winner
- Against removal:
  - Incumbent shall be repaid for actual and legitimate expenses incurred by the election from the treasury of the municipality.