

ORDINANCE NO. 03-658

AN ORDINANCE RELATING TO recall of elected officials; to authorize a defense statement by the official sought to be recalled; to harmonize with state law; to repeal conflicting ordinances and sections; and to provide an effective date.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FRIEND, NEBRASKA:

Section 1. Section 1-713 of the Municipal Code of Friend, Nebraska, is amended to read as follows:

RECALL PROCEDURE.

(A) Any or all of the elected officials of the city may be removed from office by recall pursuant to Neb. RS 32-130 1 to 32-1309. Petition circulators shall conform to the requirements of Neb. RS 32-628, 32-630, and 32-1303. Each petition paper shall conform to the requirements of Neb. RS 32-1304.

(B) (1) The petition papers shall be procured from the City Clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the Clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form in concise language of 60 words or less the reason or reasons for which recall is sought, and shall request that the Clerk issue initial petition papers to the principal circulator for circulation. The Clerk shall deliver a copy of the affidavit by certified mail to the official sought to be removed. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of 60 words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within 20 days after the official receives the copy of the affidavit. The Clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within 30 days from the date of issuing the petitions.

(2) The Clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The Clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the Clerk may distribute such petitions to registered voters residing in the district who may act as circulators of such petitions. For purposes of this section, if the official was elected by ward, district shall mean that ward, and if the official was not elected by ward, district means the city.

(3) Petition signers shall conform to the requirements of Neb. RS 32-629, 32-630, and 32-1303.

(4) A petition demanding that the question of removing the Mayor, a member of the City Council, or another elected official be submitted to the registered

voters shall be signed by registered voters equal in number to at least 35% of the total vote cast for that office in the last general election, except that for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least 35% of the number of votes cast for the person receiving the most votes for such office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition. (Neb. RS 32-1303)

(C) (1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the Clerk within 30 days after the Clerk issues the initial petition papers to the principal circulator or circulators.

(2) Within 15 days after the filing of the petition, the Clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the Clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the Clerk for signature verification. If the petition is found to be sufficient, the Clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the Clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose. (Neb. RS 32-1305)

(D) If the recall petition is found to be sufficient, the Clerk shall notify the official whose removal is sought and the City Council that sufficient signatures have been gathered. If the official does not resign within five days after receiving the notice, the Council shall order an election to be held not less than 30 nor more than 45 days after the expiration of the five-day period, except that if any other election is to be held in the city within 90 days of the expiration of the five-day period, the Council shall provide for the holding of the removal election on the same day. After the Council sets the date for the recall election, the recall election shall be held regardless of whether the official whose removal is sought resigns before the recall election is held. (Neb. RS 32-1306)

(E) (1) If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in division (F) of this section.

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as otherwise provided in this section and state law.

(3) If the election results show a margin of votes equal to 1% or less between the removal or retention of the official in question, the Secretary of State, Election Commissioner, or County Clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the City Clerk that he or she does not want a recount.

(4) If there are vacancies in the offices of a majority or more of the members of the City Council at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, Election Commissioner, or County Clerk.

(5) No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office.

(Neb. RS 32-1308)

(F) No recall petition shall be filed against an elected official within 12 months after a recall election has failed to remove him or her from office or within six

months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.
(Neb. RS 32-1309)

Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this 4th day of November 2003.

Roger C. Horne
Mayor



Debbie Gilmer
City Clerk