

ARTICLE VIII. - INITIATIVE, REFERENDUM AND RECALL⁶

Footnotes:

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Editor's note— A Charter election held on May 8, 2010, amended Art. VIII in its entirety to read as herein set out. Former Art. VIII, §§ 8.01—8.20, pertained to similar subject matter and derived from a special election held Aug. 11, 1979 and an election held May 7, 2005.

Section 8.01. - Power of initiative.

The electors shall have the power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change of substance, to adopt or reject it at a City election, provided that such power shall not extend to matters prohibited by Charter or law. Such initiative power may be used to enact a new ordinance or to repeal or amend sections of an existing ordinance. Any initiative ordinance may be submitted to the Council by a petition signed by qualified electors of the City equal in number to at least thirty (30) percent of the electors voting in the last regular municipal election.

(Charter Election of 5-8-2010)

Section 8.02. - Power of referendum.

The electors shall have power to approve or reject at the polls any ordinance passed by the Council or submitted by the Council to a vote of electors, as provided herein, such power being known as the referendum. Ordinances submitted to the Council by initiative petition and passed by the Council without change shall be subject to the referendum in the same manner as other ordinances. Within twenty (20) days after the enactment by the Council of any ordinance which is subject to a referendum, a petition signed by qualified electors of the City equal in number to at least thirty (30) percent of the electors voting in the last regular municipal election may be filed with the City Secretary requesting that any such ordinance be either repealed or submitted to a vote by the electors.

(Charter Election of 5-8-2010)

Section 8.03. - Power of Recall.

The Mayor or any other member of the Council may be removed from office by recall. A recall petition must be signed by qualified voters of the city equal in number to at least fifty (50) percent of the voters voting in the last general municipal election at which any members of the Council were elected; provided, however, that the petition shall contain the signatures of at least four hundred and fifty (450) qualified voters of the city and shall conform to other provisions of this article and to state law.

(Charter Election of 5-8-2010)

Section 8.04. - When Initiative and Referendum Prohibited.

The power of the initiative and referendum does not apply to ordinances relating to:

- A. Financial matters, including the budget, the levy of taxes, or the issuance of bonds or debt instruments; (8.01)
- B. The salaries of officers or employees; (8.01)

- C. Matters which are not legislative in character or which have been withdrawn or excluded by general law from the operative field of initiative or referendum; and (new)
- D. Matters where a State or Federal law provides for an election and related election procedures. (New)

(Charter Election of 5-8-2010)

Section 8.05. - Form of Affidavit; committee of petitioners.

Any elector of the city may commence proceedings contemplated by this article by filing with the city secretary a signed and notarized affidavit which shall contain the names and addresses of no more than five (5) electors, who as a committee of petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit shall specify the address to which all notices to the petitioner's committee are to be sent. The affidavit shall set out in full the proposed initiative ordinance, or the ordinance to be reconsidered, or in the case of recall, shall state the name of the official whose removal is sought and a statement of the grounds for removal. A separate affidavit shall be submitted for each individual official whose recall is sought. (11/9/09)

(Charter Election of 5-8-2010)

Section 8.06. - Petition Forms.

Within two (2) business days after receiving a completed affidavit, the city secretary shall make available to the person(s) making such affidavit, copies of petition blanks. Such blanks when issued by the City Secretary shall bear his or her signature and be addressed to the Council, and shall be numbered, dated, and indicate the name of the person(s) to whom issued. The affidavit submitted by the committee of petitioners which shows the full text of proposed ordinance, or the ordinance petitioned for referendum, or the name of the officer subject to removal and the grounds given for removal, shall be imprinted on the back of each petition blank or attached to each petition blank.

The petition blanks shall require each signer to acknowledge that he or she has read the affidavit submitted by the committee of petitioners. The petition blanks when issued by the city secretary shall also indicate the number of such blanks issued and in the case of a recall petition, the name of the official(s) whose removal is sought. The City Secretary shall enter in a record to be kept in his or her office the name of the elector(s) to whom the petition blanks were issued, the number series of the petition blanks and the number of petition blanks issued to each elector.

All required forms shall be approved by the city attorney before distribution.

(Charter Election of 5-8-2010)

Section 8.07. - Circulation of the Petition.

All petition forms circulated must be on the official forms received from and signed by the city secretary. All pages of the petition shall be uniform in size and style and shall be assembled as one (1) instrument for filing. Each signer must be a registered voter of the city and shall sign his/her name in ink or indelible pencil on the petition form. Additional required information shall be entered on the petition forms in accordance with the Texas Election Code.

Attached to or shown on each copy of such petition, there shall be a notarized affidavit of the circulator thereof stating that he or she, and he or she only personally circulated the foregoing copy of such petition, that it bears a stated number of signatures, that all signatures appended thereto were made in his or her presence and that he or she believes them to be genuine signatures of the persons whose names they purport to be, that each signer had an opportunity before signing to read the full text of the

ordinance proposed or sought to be reconsidered, or the identity of the official whose recall is being sought and the reasons for recall. In addition to the requirements contained in the Charter, all petitions shall be filed in accordance with the Texas Election Code.

A signature on a petition may be withdrawn as provided by Chapter 277 of the Texas Election Code or as may hereafter be amended.

All petition forms shall be submitted and filed as one instrument to the city secretary no later than 30 days after the petition blanks have been issued by the city secretary to the committee of petitioners. If the 30th day falls on a day that city hall is closed, the completed petition shall be due on the first day that city hall is open following the 30th day.

(Charter Election of 5-8-2010)

Section 8.08. - Filing and examination of petitions.

Within twenty (20) days after an initiative, referendum or recall petition is filed, the City Secretary shall determine whether each copy of the petition has a proper statement of the circulator and whether the petition is signed by a sufficient number of qualified voters, and contains all other information required by state law and this charter. The City Secretary shall declare any copy of the petition entirely invalid which does not have attached thereto an affidavit signed by the circulator thereof. If a copy of the petition is found to be signed by more persons than the number of signatures certified by the circulator, each signature beyond the number certified shall be disregarded. If a copy of a petition is found to be signed by fewer than the number certified, the signatures shall be accepted unless void on other grounds.

(Charter Election of 5-8-2010)

Section 8.09. - Certification of petitions.

After completing his or her examination of the petition, the City Secretary shall certify the results thereof to the Council at its next regular meeting.

If the City Secretary finds the petition to be sufficient and in compliance with the provisions of this article of the Charter, he or she shall submit the petition to the Council with his/her certificate to that effect. If the petition is a recall petition, the official submission to council shall officially notify the official sought to be recalled. If the city secretary certifies that the petition is sufficient, the City Council shall take the action appropriate for the type of petition as specified in this article.

If the City Secretary certifies that the petition is insufficient he or she shall send the petitioner's committee a certificate of insufficiency by certified mail which shall include the particulars in which the petition is defective.

The City Council will take no action on a petition which has been certified as insufficient by the City Secretary.

(Charter Election of 5-8-2010)

Section 8.10. - Amendments.

Any supplemental petition submitted to the City Secretary to address any insufficiencies will be governed by Chapter 272 of the Texas Election Code or as may hereafter be amended. The City Secretary shall examine the supplemental petition and follow the same procedures applicable to the initial petition subject to the provisions of this Charter and Chapter 272 of the Election Code.

(Charter Election of 5-8-2010)

Section 8.11. - Action on Petitions & Submission to Electors.

A. Initiative and Referendum Petitions.

When a referendum petition, or amended petition has been certified as sufficient by the City Secretary, as defined in Section 8.09 of this Charter, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the electors as hereinafter provided.

Whenever the Council receives a certified initiative or referendum petition from the City Secretary, it shall proceed at once to consider such petition. A proposed initiative ordinance shall be read and provision made for a public hearing upon the proposed ordinance. A referred ordinance shall be considered by the Council and its final vote upon such reconsideration shall be upon the question, "Shall the ordinance specified in the referendum petition be repealed?" The Council shall take final action on an ordinance not later than sixty (60) days after the date on which such ordinance was submitted to the Council by the City Secretary.

If the council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor, or if the council fails to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors not less than thirty (30) days from the date the Council takes its final vote thereon. The Council shall submit the subject ordinance to the electors on the first calendar date provided by state law for a regular or special municipal election which satisfies the time requirement stated herein.

B. Recall Petitions.

Upon certification by the city secretary of a sufficient recall petition at a council meeting, the council member(s) whose removal is sought shall have five (5) calendar days to voluntarily resign his/her position(s). If the official whose removal is sought does not resign within five (5) days after such notice, the City Secretary shall place on the agenda of the next Council meeting the ordering of and setting of the recall election date at which time the Council shall thereupon order and fix a date for holding a recall election within the time period provided by the Texas election Code; however, the recall election may be held at the same time as any municipal election held within such period.

(Charter Election of 5-8-2010)

Section 8.12. - Form of ballot.

A. Initiative and Referendum Elections.

Ordinances submitted to a vote of the electors in accordance with the initiative and referendum provisions of this Charter shall be submitted by ballot title which shall be approved in all cases by the city attorney. The ballot title may be different from the legal title of any such initiated or referred ordinance and it shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance.

The ballot shall have, below the ballot title, the following propositions, one above the other, in the order indicated: "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE." The elector shall be given an opportunity to vote for either of the two (2) propositions and thereby to vote for or against the ordinance. Any number of ordinances shall be voted on at the same election and may be submitted on the same ballot.

B. Recall Elections.

Ballots used at recall elections shall conform to the following requirements: There shall be printed with respect to each person whose removal is sought the question "SHALL (name of person) BE REMOVED FROM THE OFFICE (name of office) BY RECALL?" Immediately below each such question there shall be printed the following propositions, in the order indicated: "FOR THE RECALL OF (name of

person)" and "AGAINST THE RECALL OF (name of person)." The elector shall be given an opportunity to vote for either of the two propositions and thereby to vote for or against the recall of an official(s).

(Charter Election of 5-8-2010)

Section 8.13. - Results of election.

A. Initiative and Referendum.

If a majority of the electors voting on a proposed initiative ordinance shall vote in favor thereof, it shall thereupon be an initiative ordinance of the City. A referred ordinance which is not approved by a majority of the electors voting thereon shall thereupon be deemed repealed. If conflicting ordinances are approved by the electors at the same election, the one receiving the greatest number of affirmative votes shall prevail.

Initiative and referendum ordinances adopted or approved by the electors shall be made available as provided in Article II, Section 2.15 C, and may be amended or repealed by the Council as in the case of other ordinances; provided however, that no ordinance adopted at the polls under the initiative or referendum shall be amended or repealed by the Council within six (6) months of adoption of said ordinance.

B. Recall.

If a majority of the votes cast at a recall election shall be against the recall of any official named on the ballot, he or she shall continue in office for the remainder of his or her unexpired term. If a majority of the votes cast at such an election shall be for the recall of any official named on the ballot he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office and the city council shall immediately order a special election to be held in accordance with the Texas Election Code to fill the vacancy or vacancies, unless the remainder of the unexpired term of the recalled Councilmember(s) is 12 months or less. Unexpired terms of 12 months or less may be filled by Council appointment as provided in Section 2.05 (c).

No recall petition shall be filed against an elected official within six (6) months after he or she takes office. Following an unsuccessful recall effort, the same official shall not be subjected to another recall petition for a period of twelve (12) months.

(Charter Election of 5-8-2010; Charter Election of [5-9-2015](#))

Section 8.14. - Nonbinding Elections.

Council shall have the right to call nonbinding elections if so approved by the majority vote of council members present and voting.

If a nonbinding election is called by council, the ballot shall so state that it is a nonbinding election.

Elections under Section 8.14 shall be treated as special elections as identified in this Charter.

Nonbinding elections shall never take the place of elections required by this Charter or by state law.

(Charter Election of 5-8-2010)