

Effective January 1, 2011

## **ARTICLE V**

### **Initiative, Referendum and Recall**

#### **Part I. Initiative and Referendum**

##### **Sec. 5.01 - General Authority.**

- (a) Initiative: The Registered Voters of the City of Ellsworth may propose orders and ordinances to the City Council, except that an order or ordinance proposed by initiative may not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of officers or employees. If the Council fails to adopt an order or ordinance so proposed without any change in substance, the Registered Voters may vote to adopt or reject the order or ordinance at an election in accordance with this Article.
- (b) Referendum: The Registered Voters of the City of Ellsworth may require reconsideration by the Council of an ordinance, except that a reconsideration proposed by referendum may not extend to the budget or capital program unless allowed by Sec. 5.07, any emergency ordinance or ordinance relating to appropriation of money, levy of taxes, salaries of officers or employees, or ordinances mandated by state law or approved by a state agency. If the Council fails to repeal an ordinance so reconsidered, the Registered Voters may vote to approve or reject the ordinance at an election in accordance with this Article.

##### **Sec. 5.02 - Commencement of Proceedings; Petitioners' Committee.**

Initiatives and Referenda may be commenced by petition. Any five Registered Voters of the City of Ellsworth may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form. The affidavit must:

- (a) state the names and addresses of the members of the committee;
- (b) specify the individual and official mailing address to which all notices to the committee are to be sent, and
- (c) set out in full the proposed initiative ordinance or cite the ordinance sought to be reconsidered.

The City Clerk will promptly issue the appropriate petition forms to the petitioners' committee after the affidavit of the petitioners' committee is filed with the City Clerk.

##### **Sec. 5.03 - Petitions.**

- (a) Form and Content. The City Clerk will develop and maintain a standardized petition form for use for all initiative and referendum petitions. A petition may contain as many separate petition papers as necessary, but will be considered a single petition. All paper must be

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uniform in size and style and must be assembled as one instrument for filing. Each Registered Voter who signs a petition must add his or her printed name and Physical Address. Each signature must be in ink. A Registered Voter may not sign a petition more than once. At all times during their circulation, each petition must contain or have attached thereto the full text of the ordinance proposed or sought to be reconsidered.

(b) Affidavit of Circulator. Each separate petition paper must have an attached affidavit from the circulator stating the number of signatures on each petition and certifying that:

- (1) he or she personally circulated the petition paper,
- (2) each signature was made in the circulator's presence,
- (3) each signature is the genuine signature of the person whose name it purports to be,
- (4) the circulator has advised each signatory that the signatory may only sign a petition once, and
- (5) that each signatory had an opportunity before signing to read the full text of the order or ordinance proposed or ordinance sought to be reconsidered.

(c) Number of Signatures. Initiative and referendum petitions must be signed by Registered Voters of the City of Ellsworth equal in number to at least 20 percent of the total number of Registered Voters who were registered to vote at the last regular municipal election as certified by the City Clerk.

#### **Sec. 5.04 - Procedure after Filing.**

(a) Notice of sufficiency; Amendment.

- (1) Within 20 Days after the date on which the petition is filed, the City Clerk will determine whether the petition is sufficient under the provisions of this Charter and state law and will promptly send written Notice of the determination to the petitioners' committee by registered mail.
- (2) If the City Clerk determines the petition is sufficient, the Notice will so inform the committee.
- (3) If the City Clerk determines the petition is insufficient, the Notice will inform the committee how it is defective.
  - (i) If a petition is determined to be insufficient for lack of the required number of valid signatures, the petitioners' committee may amend the petition once by filing supplementary petitions within ten (10) Days after receiving the Notice. All supplementary petitions must comply with the requirements of Sec. 5.03(a) and (b).

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For the purpose of calculating this deadline, the Notice will be deemed to be received by the petitioner's committee three (3) Days after mailing.

- (ii) Within five (5) Days after any supplementary petitions are filed, the City Clerk will determine whether the petition as amended is sufficient under the provisions of this Charter and state law and promptly send a final Notice to the petitioners' committee by registered mail as in the case of the original petition.
  - (iii) If a petition or amended petition is determined to be insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the City Clerk will promptly present the Notice to the Council and the Notice will then be a final Notice determination as to the sufficiency of the petition.
- (b) **City Council Review; Amendment.** If a petition has been determined to be insufficient and the petitioners' committee does not amend it within the time provided or if an amended petition has been determined to be insufficient, the committee may file a request that it be reviewed by the Council within five (5) Days after receiving a copy of the final Notice. For the purpose of calculating this deadline, the final Notice will be deemed to be received by the petitioner's committee three (3) Days after mailing.

The Council will review the final Notice at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination will then be the final determination as to the sufficiency of the petition.

- (c) **Court Review; New petition.** A final determination as to the sufficiency of a petition by the Council may be appealed to Superior Court. A final determination of insufficiency even if sustained upon court review, will not prejudice the filing of a new petition for the same purpose.

**Sec. 5.05 - Referendum Petitions; Suspension of Effect of Ordinance.**

- (a) When a referendum petition is filed with the City Clerk within thirty (30) Days from the date of passage of an ordinance, the ordinance to be reconsidered will be suspended from taking effect. Such suspension terminates when:
  - (1) There is a final determination of insufficiency of the petition, or
  - (2) The petitioners' committee withdraws the petition, or
  - (3) The Registered Voters reject the referendum.
- (b) When a referendum petition is filed with the City Clerk more than thirty (30) Days from the date of passage of an ordinance, the ordinance to be reconsidered will remain in effect unless and until such time as the Registered Voters approve the referendum.

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**Sec. 5.06 - Action on Petitions.**

- (a) Action by City Council. When an initiative or referendum petition has been determined sufficient, the Council will promptly consider enacting the proposed initiative ordinance or reconsider the referred ordinance by voting for or against its enactment or repeal, as applicable. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) Days or fails to repeal the referred ordinance within thirty (30) Days after the date the petition was determined sufficient, the initiative or referendum will be considered “pending” and the Council will submit the proposed or referred ordinance to the Registered Voters.
- (b) Submission to Registered Voters. The vote on a proposed or referred ordinance will be held:
  - (1) at the next regular or special City of Ellsworth election if such an election is scheduled to take place within 180 Days of the date the initiative or referendum becomes pending, provided that the date the initiative or referendum becomes pending is not already within thirty (30) Days of such City of Ellsworth election; or
  - (2) if no regular or special City of Ellsworth election falls within the time period set forth in subparagraph (1) above, then the Council must call a special election to consider the initiative or referendum.
- (c) Copies of the proposed or referred ordinance will be made available at the polls.
- (d) An ordinance to be voted on will be presented for voting by ballot title. The ballot title of a measure may differ from its legal title but must be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot title will appear the following question in the case of an initiative: “Shall the above described order or ordinance be adopted?”; and in the case of a referendum: “Shall the above described ordinance be repealed?” Immediately below such question will appear in the following order the words “Yes” and “No”.

**Sec. 5.07 - Referendum on Capital Expenditures.**

- (a) The Registered Voters of the City of Ellsworth have the power to require reconsideration by the Council of any resolution, ordinance or other action taken by the Council to authorize a capital expenditure which exceeds one half of one percent (0.5%) of the State assessed valuation of the City of Ellsworth for the preceding fiscal year in which said capital expenditure is authorized. The provision applies to any capital expenditure regardless of the manner in which its funding is authorized by the Council but does not apply to capital expenditures which are authorized as a part of the operation of the sewer or water departments or as a part of the operation of any capital program the funding of which is totally met by rate payers and not from the general revenues of the City of Ellsworth.

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- (b) The Council may on its own initiative order that a referendum be held on any capital expenditure. If the Council orders a referendum on any capital expenditure authorized by its vote, no subsequent referendum under the provisions of subsection (a) will be available.
- (c) The procedure for initiating a referendum under this Section are the same as set forth above in the applicable provisions of Sections 5.02 through 5.06.

## **Part II. Recall**

### **Sec. 5.08 - General Authority.**

Any person elected to the office of City Councilor in the City of Ellsworth may be recalled and removed therefrom by the electors of the City of Ellsworth as herein provided.

### **Sec. 5.09 - Procedure for Initiating Recall Petition.**

- (a) Any thirty (30) Registered Voters of the City of Ellsworth may make and file with the City Clerk an affidavit containing the name of the Councilor whose removal is sought. These thirty (30) Registered Voters will constitute the Recall Committee. The affidavit must contain:
  - (1) the signature of each person who will compose the Recall Committee;
  - (2) the printed name and Physical Address of each signatory;
  - (3) the name of the individual and official mailing address to which all notices to the committee are to be sent, and
  - (4) a statement detailing the reason(s) why recall is sought. This statement detailing the reason(s) for removal will thereafter be made a part of the recall petition.
- (b) Upon filing of the affidavit and verification by the City Clerk that each signatory is a Registered Voter of the City of Ellsworth, the City Clerk will prepare a recall petition of the Councilor named in the affidavit. The Recall Committee has thirty (30) Days from the date of verification of the affidavit by the City Clerk to cause the petition to be signed by not less than 20% of the Registered Voters of the City of Ellsworth as determined at the time of the last preceding regular municipal election. To be valid, each Registered Voter's signature must be followed by the Registered Voter's Physical Address. Each separate recall petition paper must have an attached affidavit from the circulator stating the number of signatures on each petition and certifying that each signature was made in the circulator's presence and is the genuine signature of the person whose name it purports to be.

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**Sec. 5.10 - Examination and Certification of Recall Petition.**

Within twenty (20) Days after the closing of the thirty-day petition-gathering period, the City Clerk will ascertain whether or not the petition was signed by the requisite number of Registered Voters.

- (a) If the City Clerk determines the petition is sufficient, the City Clerk will attach a certification to the petition stating that:
  - (1) the petition has the required number of signatures of Registered Voters,
  - (2) each separate recall petition paper has an attached affidavit from the circulator stating the number of signatures on each petition and certifying that each signature was made in the circulator's presence and is the genuine signature of the person whose name it purports to be,
  - (3) each signatory had an opportunity to read the statement detailing the reason(s) for recall, and
  - (4) the petition is sufficient.
- (b) If the City Clerk determines the petition is insufficient, the City Clerk will notify the Recall Committee how it is defective.
  - (1) If a petition is determined to be insufficient for lack of the required number of valid signatures, the committee may amend the petition once by filing supplementary petitions within ten (10) Days after receiving the Notice. All supplementary petitions must comply with the requirements of Sec. 5.09(b). For the purpose of calculating this deadline, the Notice will be deemed to be received by the committee three (3) Days after mailing.
  - (2) Within five (5) Days after any supplementary petitions are filed, the City Clerk will determine whether the petition as amended is sufficient under the provisions of this Charter and state law and promptly send a final Notice to the committee by registered mail.
  - (3) If the committee does not file a supplemental petition or if the City Clerk determines that the petition as amended is defective, the petition will have no further force or effect and all proceedings thereon will be terminated.

**Sec. 5.11 - Calling Recall Elections.**

- (a) If the petition is certified by the City Clerk to be sufficient:

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- (1) the City Clerk will submit the petition with certification to the Council within ten (10) Days of the date of certification and will notify the Councilor whose removal is sought by such action;
- (2) within twenty (20) Days of the receipt of the City Clerk's certification, the Council will convene a meeting to order an election to be held not more than thirty (30) Days after the meeting to submit to vote the question of recall.
- (3) If recall is effective, the vacancy created thereby will be filled in accordance with the provisions of Article 2.10(c).

(b) Form of Ballot in Recall Election. The form of the ballot at the recall election will be as follows:

“Shall Councilor (name of person proposed for recall) be recalled and removed from the office of City Councilor?”

Immediately below such question will appear in the following order the words “YES” and “NO”.

**Sec. 5.12 - Majority Vote Required.**

The Councilor whose recall is sought as provided above will be recalled and immediately removed from office when a majority of those voting thereon in the municipal election vote in the affirmative.