

TOWN OF GOULDSBORO
ORDINANCE FOR THE RECALL OF ELECTED OFFICIALS

Revised: June 22, 1999
COMPLETE ORDINANCE REVISION

The purpose of this ordinance is to provide the residents of Gouldsboro a means by which an elected municipal official may be removed from office when such removal is warranted by just cause, while ensuring due process for all parties.

SECTION 1

All elected municipal officials except those exempt by virtue of state statute are subject to this ordinance.

SECTION 2

A recall of an elected official may be initiated when a petition is filed alleging that one or more of the following has occurred, any one of which, if proven at the public hearing shall constitute just cause for removal from office:

- a. Malfeasance in office - Acts which are in and of themselves illegal or contrary to official obligation;
- b. Misfeasance in office - The improper and unlawful execution of some act that in itself is lawful and proper; or,
- c. Nonfeasance in office - The failure to perform some act which is an official obligation or requirement.

SECTION 3

When one or more registered voter(s) in the Town of Gouldsboro believes there is just cause which warrants initiation of a recall, said voter(s) shall complete an affidavit and petition (in the format provided in Appendix A of this Ordinance) itemizing and describing the complaint against the named municipal official, and secure no fewer than fifty (50) signatures of registered voters of the Town of Gouldsboro to the same (see Appendix B). The circulator's statement attesting that he or she has witnessed each signature, shall be sworn and acknowledged before a notary public.

SECTION 4

The petition shall then be delivered to the Town Clerk. After notation of receipt, the Clerk shall deliver, within two (2) working days, the petition to the Registrar of Voters. The Registrar of Voters shall have five (5) working days to determine that the signatures on the petition are those of registered voters. If the Registrar finds that the petition does not have a sufficient number of qualified signatures, the Town Clerk shall be informed in writing and the Town Clerk shall, within the next business day, notify the circulator of the

petition of the deficiency by certified mail, return receipt requested. In the event of insufficient signatures, the circulator of the petition shall have five (5) working days from receipt of notification to remedy the deficiency. Should the additional signatures not be provided within five (5) working days the petition shall become null and void.

SECTION 5

When fifty (50) signatures to the petition have been validated by the Registrar of Voters, the petition shall be forwarded to the Town Clerk who shall, within the next business day, notify the official(s) whose recall is being sought, in writing by certified mail, return receipt requested, with a copy of the petition and notice that a challenge, if desired, must be made within five (5) working days.

SECTION 6

The municipal official whose recall is being sought has five (5) working days from the date of receipt of certified mailing to challenge in writing the validity of the signatures on the petition. The validity of the challenge shall be decided by the Registrar of Voters within five (5) working days after the challenge is presented. The Registrar of Voters shall then notify in writing the challenger, the petitioner and the Board of Selectmen within one working day of the decision on the challenge.

SECTION 7

The Chairman of the Board of Selectmen (or the next senior member of the Board if the Chair is a subject of the Recall) shall, within five working days, appoint an independent Examiner who neither owns property nor resides in the Town of Gouldsboro and who has experience in mediation, legal proceedings or arbitration. The Examiner's shall receive from the Town Clerk a copy of the petition in order to determine if one or more of the criteria stated in Section 2 above are met. For his or her services hereunder the Examiner shall be entitled to reasonable compensation from the Town and shall be indemnified by the Town for his or her services to the same extent as a member of the Board of Selectmen.

Within 15 days of receipt of such evidence the Examiner shall submit a written Report to the Board of Selectmen and state whether the petition meets one or more of the criteria stated in Section 2 above. If, in the opinion of the Examiner the petition does not meet one or more of the criteria as stated in Section 2 the petition is null and void and of no further effect.

SECTION 8

If the Examiner determines that the petition meets the one or more of the criteria stated in Section 2, the Board of Selectmen shall within ten (10) days set a date and time for a Public Hearing and Special Town Meeting to be held no sooner than 40 nor more than 55 calendar days from the receipt of the Examiner's Report. The affected official shall be given written notice of the Public Hearing and Special Town Meeting, a copy of the petitioner's charges and be advised of his or her right to counsel and be provided with a copy of the Rules of Order. The Public Hearing shall be held in accordance with the Rules

of Order contained in Section 10 of this Ordinance. Within three (3) working days of the scheduling of the Public Hearing and Special Town Meeting the Examiner's Report shall be posted along with the Notice of Public Hearing and Special Town Meeting. The notice of Public Hearing and Special Town Meeting shall be advertised for two consecutive weeks in two newspapers with local circulation. The advertisement shall include the fact that a Special Town Meeting will be held at the conclusion of the Public Hearing for the purpose of voting on the Recall.

SECTION 9

The Public Hearing and Special Town Meeting shall require a quorum of at least 20% of the voters at the last gubernatorial election. The determination of the quorum shall be the first order of business for both the Public Hearing and the Special Town Meeting. Failure to achieve a quorum for either the Public Hearing or the Special Town Meeting renders the Recall Petition null and void. At the conclusion of the public hearing, the Town Clerk shall convene a Special Town Meeting and determine whether a quorum exists. The next order of business shall be the election of the moderator. The vote to recall shall require a simple majority.

SECTION 10

The following Rules of Order shall govern the Public Hearing:

-The presiding officer at the Public Hearing shall be the Examiner selected in accordance with this Ordinance. He or she shall have the authority to: rule upon issues of evidence; regulate the course of the hearing and rule upon issues of procedure.

-These rules govern the practice, procedure, and conduct of a Public Hearing for the disposition of a recall petition. When good cause appears, the Examiner may permit deviation from these rules insofar as he or she may find compliance therewith to be impractical or unnecessary.

-The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct. At this time, the Report of the Examiner shall be read. A recording of the hearing shall be made by a court reporter. Recording devices shall be allowed when, in the determination of the presiding officer, they will not interfere with the conduct of the hearing or be used to intimidate witnesses. After being sworn, all witnesses shall be required to state for the record their name and address of residence.

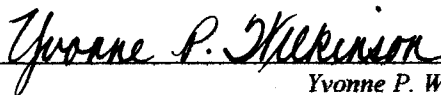
-Evidence which is relevant and material to the subject matter of the hearing and of a type commonly relied upon by reasonable prudent individuals in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The presiding officer may, at any time, take notice of judicially cognizable fact, generally recognized facts of common knowledge to the general public. All documents, materials, and objects (of which the Town Clerk shall become the custodian) offered as evidence shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies if the original is not readily available. All such evidence shall be available for public examination and explanation both during the hearing and following. All objections to the rulings of the presiding officer regarding evidence or procedure shall be made in a timely manner during the course of the hearing.

-The petitioner shall be first to testify and shall submit all evidence supporting the petition. Others who wish to present evidence regarding the recall will do so at this time. The person subject to recall and his or her counsel may ask questions of those presenting evidence in support of the petition at the conclusion of each witness' testimony. At the conclusion of the testimony of each witness all other persons shall have the opportunity to question such witnesses through the presiding officer.

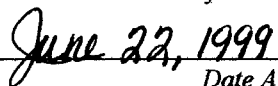
-At the conclusion of the testimony of the petitioners, all persons, beginning with the official being recalled, shall have the opportunity to present rebuttal testimony. Rebuttal testimony shall be limited to those matters which were raised during direct testimony, and no new subject matter may be introduced into evidence by way of rebuttal.

SECTION 11

The cost of the Public Hearing and legal counsel for the official being recalled shall be borne by the town up to and including the Special Town Meeting. Total cost of the official's legal fees shall not exceed \$2,500 and said monies may be appropriated from unappropriated surplus by the Board of Selectmen.



Yvonne P. Wilkinson
Town Clerk of Gouldsboro



Date Adopted

AFFIDAVIT

I, _____, being first duly sworn, do depose and say as follows:

1. I reside at _____. I am of legal age and competent to give testimony in this Affidavit. I make the following statements upon my personal knowledge, information and belief, and, to the extent based upon information and belief, I believe them to be true.

2. The following qualified voters of the Town of Gouldsboro constitute the Petitioners Committee and have been responsible for circulating the attached Recall Petition and for filing it in proper form:

_____	(Name)
_____	(Address)
_____	(Address)
_____	(Name)
_____	(Address)
_____	(Address)
_____	(Name)
_____	(Address)
_____	(Address)
_____	(Name)
_____	(Address)
_____	(Address)
_____	(Name)
_____	(Address)
_____	(Address)

3. The mailing address to which all notices to the Committee are to be sent is:

_____	(Name)
_____	(Address)
_____	(Address)

4. The Petition supporting the recall of _____
is attached hereto as Exhibit A.

Date

Affiant

STATE OF MAINE
HANCOCK, ss

Date: _____

Personally appeared the above-named Affiant, _____
and made oath that the foregoing statements by him/her made are true and are based upon his/her
own personal knowledge, information and belief, and to the extent based upon information and
belief, he/she believes them to be true.

Before me,

Notary Public/Attorney at Law

(Print or type name as signed)

PETITION

The undersigned voters of the Town of Gouldsboro hereby petition the Selectmen of the Town of Gouldsboro to convene a recall proceeding for the purpose of determining whether _____ shall be recalled from office as a member of the _____ on account of the following acts or failures to act, which constitute, in the opinion of the undersigned, malfeasance, misfeasance, misfeasance in office:

(Note to circulators: The acts constituting the basis for the petition must be "itemized and described" in accordance with the Recall Ordinance.)

Name (Printed)	Name (Signed)	Address/Residence	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

AFFIDAVIT

I, _____, the circulator of this Petition, being first duly sworn, hereby certify and attest that I witnessed each signature hereon.

STATE OF MAINE
HANCOCK, ss.

Circulator

Date

Subscribed and sworn to before me.

Notary Public/Attorney at Law

(Print or type name as signed)

**Affidavit and petition
delivered to Town Clerk
(Section III)**



**Petition delivered
to Registrar of Voters
(Section IV)**



**Signatures validated
or invalidated
(Section IV)**



**When 50 signatures validated,
petition delivered to Town Clerk
(Section V)**



**Town Clerk transmits copy of
petition to Municipal Official
whose recall is being sought
(Section VI)**



**Challenge period
(Section VI)**



**Independent Examiner appointed.
(Section VII)**



**Examiner reports to
Board of Selectmen
whether or not criterion met.
(Section VII)**



**Board of Selectmen set date
and time for Public Hearing
and Special Town Meeting.
(Section VIII)**