

SUBJECT: ORDINANCE #2009-2 (INITIATING AND REFERRING ORDINANCES)

ADOPTED DATE: OCTOBER 19, 2009

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**INITIATING AND REFERRING ORDINANCES IN CASS COUNTY  
CASS COUNTY ORDINANCE #2009-2**

**1) PURPOSE:**

It is the purpose of this Ordinance to facilitate the implementation of the Initiative and Referendum provision of Article 4 of the Home Rule Charter (HRC) approved by the voters of Cass County on November 1, 1994 which reads as follows:

Article 4  
Initiative and Referendum

The powers of initiative and referendum are reserved to the electors of Cass County. The applicable provisions of state law will govern the exercise of the powers of initiative and referendum under this charter. The number of signatures required to exercise these powers is at least equal in number to fifteen per cent of the number of electors voting in the county for the office of governor in the last general election.

**2) HISTORY:**

The HRC was adopted by the voters of Cass County on November 1, 1994 and does not elaborate in Article 4 as to which state laws will govern the exercise of the powers of initiative and referendum. There are no applicable state laws on initiative and referrals for county governments in state law, however there are state laws governing initiative and referrals for state measures and for ordinances in municipal (city) government. This ordinance will define the procedures for initiating and referring ordinances to the voters of Cass County. Since county government is more closely related to municipal government than state government the ordinance was developed using North Dakota Century Code chapter 40-12 with some provisions taken from Title 16.1 of the NDCC - Elections.

**3) DEFINITIONS:**

**Initiate:** to propose (a measure) by initiative procedure: *to initiate an ordinance*

**Refer:** to submit (a matter in dispute) to an authority for arbitration, decision, or examination.

- a) **PETITION PROCESS - PETITION - ORDINANCE:** "Petition Process" refers to both the initiative and referendum procedure. "Petition" refers to the document which is drafted to initiate or refer an "ordinance" and upon which signatures are gathered. The terms "petition" and "ordinance" are often used interchangeably; thus you will hear terms like "initiated ordinance" and "initiated petition" or "referral petition" and "referred ordinance." After a "petition" to initiate or refer an "ordinance" has qualified for placement on the ballot, it is almost always exclusively referred to as an "ordinance." You will then hear terms like "ordinance number one," and "ordinance number two."

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**b) THE TWO POSSIBLE USES OF THE PETITION PROCESS ARE:**

- i. **STATUTORY INITIATIVE:** Statutory Initiative refers to the use of the petition process to amend or enact a new county ordinance.
- ii. **REFERRED ORDINANCE - REFERRAL INITIATIVE - REFERRAL DRIVE:** These three terms are used interchangeably and refer to the use of the petition process to "refer to a vote of the people" ordinances passed by the County Commission.

**4) SUBMISSION OF PROPOSED ORDINANCE BY PETITION:**

A proposed ordinance may be submitted to the Cass County Commission by a petition signed by qualified electors thereof equal in number to at least fifteen percent of the number of electors voting in the county for the office of governor in the last general election. The petition must be filed in the county auditor's office, and must contain a request that the ordinance set out in the petition be submitted to a vote of the qualified electors of the county.

**5) SUBMISSION OF PETITION TO REFER AN ORDINANCE:**

An ordinance which has been adopted by Cass County may be referred to the qualified electors of the county by a petition protesting against such ordinance. Such petition shall be signed by qualified electors thereof equal in number to at least fifteen percent of the number of electors voting in the county for the office of governor in the last general election and shall be presented to the county commission within thirty days and before four p.m. on the thirtieth day after the ordinance described in the petition was adopted by the county commission. If a petition is mailed to the county commission, it shall be in the possession of such body before four p.m. on the thirtieth day after the ordinance was adopted. Unless the ordinance protested against was passed by a four-fifths vote of the members of the county commission for the immediate preservation of the public peace, health, and safety and contains a statement of its urgency, it shall be suspended upon the filing of the petition. The county commission shall reconsider the ordinance described therein, and if it is not entirely repealed, the governing body shall submit it to the vote of the qualified electors of the county at the next regular primary or general election.

**6) GATHERING SIGNATURES:**

Only qualified electors of the county may sign petitions provided for in this ordinance. The petition must state the purpose of the petition and in the case of initiated ordinances must contain the ordinance. Each petition, in addition to the names of the petitioners, must contain the name of the street upon, and the number of the house in which each petitioner resides and a contact phone number for the signer. The petitions must be signed in the presence of the circulator who must be a qualified elector of the county; it must also be accompanied by the affidavit of the circulator stating that the signers were qualified electors of the county at the time of signing, and the number of signers upon the petition at the time when the affidavit was made.

Petitions filed must be accompanied by a notarized affidavit attesting to the fact that to the best of that person's knowledge, the petitions contain at least the required number of signatures.

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**7) REVIEW OF SIGNATURES:**

Within thirty days after the filing of a petition to initiate or refer an ordinance, the county auditor shall examine the petition and ascertain from the voters' register whether or not the petition is signed by the requisite number of qualified electors. The county auditor shall conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information gathering techniques or combination thereof. The county commission shall allow such extra help for the examination of the petition as it deems necessary. The county auditor shall attach to the petition the county auditor's certificate showing the result of the examination and if the petition is insufficient, the county auditor shall state in the county auditor's certificate the reasons therefore. If the county auditor's certificate shows the petition to be insufficient, it may be amended within ten days from the date of the certificate, however, if the petition is deemed insufficient due to an inadequate number of signatures, additional signatures may not be gathered at this time. Within ten days after any such amendment, the county auditor shall make an examination of the amended petition, and if the county auditor's certificate attached thereto shall show the amended petition to be insufficient, it shall be returned to the person filing the same without prejudice to the filing of a new petition to the same effect. If the petition is sufficient, the county auditor shall submit it to the county commission without delay.

**8) TIMELINE FOR ELECTIONS:**

Initiated or Referred Ordinances will be scheduled on the next Primary or General Election if the petitions with enough valid signatures are filed by 4:00 PM one hundred ten days prior to the election. Petitions filed after the 4:00 PM deadline before a Primary or General Election will be scheduled for the next following Primary or General Election.

**9) FORM OF BALLOTS TO BE USED IN VOTING ON INITIATED OR REFERRED ORDINANCE:**

The ballot to be used in voting upon an initiated ordinance shall be in substantially the following form:

Shall an initiated ordinance as published in the official county newspaper on \_\_\_\_\_ relating to \_\_\_\_\_ (stating the nature of the proposed ordinance) be adopted:

Yes [ ]

No [ ]

The ballot to be used in voting upon a referred ordinance shall be in substantially the following form:

Shall ordinance No. \_\_\_\_\_ as published in the official county newspaper on \_\_\_\_\_ relating to \_\_\_\_\_ (stating the nature of the proposed ordinance) approved by the board of county commissioners be approved?

Yes [ ]

No [ ]

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**10) PUBLICATION OF PROPOSED OR REFERRED ORDINANCE OR PROPOSITION BEFORE ELECTION:**

The county auditor shall publish any ordinance or proposition once each week for two consecutive weeks before the election in the official county newspaper.

**11) ADOPTION OF PROPOSED ORDINANCE—EFFECT—REPEAL OR AMENDMENT OF INITIATED ORDINANCE:**

If a majority of the qualified electors voting on an initiated ordinance vote in favor thereof, it shall become a valid and binding ordinance of the county. Any ordinance proposed by a petition and adopted by a vote of the people cannot be repealed or amended except by a vote of the people. Initiated ordinances become effective on the first day of the month following the election in which the ordinance was passed.

**12) REFERRED MEASURE—SUBMISSION—RESULT OF ELECTION:**

A referred ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. If the referred ordinance was not suspended by the filing of the referendum petition, it no longer shall be effective if it is disapproved by a majority vote of the qualified electors voting on the same. If the referred measure is approved it becomes effective immediately.

**13) FINANCIAL REPORTING:**

Any person or ordinance committee who is soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of an initiative or referendum petition or ordinance placed upon a countywide ballot by action of the county commission or through petition by the electorate, shall file a detailed statement identifying contributors who made contributions in excess of \$100 in the aggregate during the reporting period and a detailed listing of all expenditures made in excess of \$100 in the aggregate. The statement must include the name, mailing address, contact telephone number, amount of each reportable contribution or expenditure and the date each reportable contribution was received or expenditure made.

The statement required of a person or ordinance committee must be filed with the Cass County Auditor no later than the twelfth day prior to the date of the election in which the ordinance appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions or expenditures during the reporting period, the person shall file a statement as required by this chapter. The statement must show the following: the gross total of all contributions received and expenditures made in excess of \$100; the gross total of all contributions received and expenditures made of one hundred dollars, or less; and the cash on hand in the filer's account at the start and close of the reporting period. Forms for reporting are available from the County Auditor's office.

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If any person or ordinance committee described above receives any contribution in excess of five hundred dollars in the twenty-day period before any election from any individual contributor, that person or ordinance committee shall make and file a supplemental statement in the same form as required by above stating the name and street address of the contributor and the amount of the contribution, and file the statement with the county auditor within forty-eight hours of the receipt of the contribution.

If a substantial irregularity is evident or reasonably alleged, the Cass County Auditor may arrange an audit of any statement filed as required above be performed by a certified public accountant of the filer's choice, subject to approval by the county auditor. If an audit of a statement arranged by the county auditor under this subsection reveals a violation of these financial reporting requirements, the candidate, political party, or political committee filing the statement shall pay a fine to the county auditor equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater. If an audit of a statement arranged by the county auditor under this subsection does not reveal a violation of this ordinance, the cost of the audit must be paid for by the county.

#### 14)PENALTIES

In addition to any other civil or criminal penalties that might be provided by law, any person who willfully violates or attempts to violate the provisions of this ordinance shall be punished as follows: (the term "willfully", as used herein, shall be defined as in North Dakota Century Code 12.1-02-02)

- a. A violation or attempt to violate the financial reporting provisions of this ordinance shall be punished as an infraction and subject to the maximum penalties provided for infractions in North Dakota Century Code §12.1-32-01.
- b. A violation or attempt to violate the provision requiring that the circulator must be a qualified elector, that the circulator must be present when the petition is signed, or that the circulator attest that the signers are qualified electors of the county at the time of signing, shall be punished as follows:
  - a. A first offense shall be a Class B misdemeanor and subject to the maximum penalties provided for such in North Dakota Century Code §12.1-32-01; and
  - b. A second or subsequent offenses committed within a 2-year period shall be a Class A misdemeanor and subject to the maximum penalties provided for such in North Dakota Century Code §12.1-32-01.
- c. A person who signs a petition when not qualified to do so, or signs a name other than that person's own name to a petition, shall be punished as follows:
  - a. A first offense shall be a Class B misdemeanor and subject to the maximum penalties provided for such in North Dakota Century Code §12.1-32-01; and
  - b. A second or subsequent offenses committed within a 2-year period shall be a Class A misdemeanor and subject to the maximum penalties provided for such in North Dakota Century Code §12.1-32-01.

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**15)SEVERABILITY:**

Should any section, provision or part of this Ordinance be adjudged invalid or unconstitutional, such adjudication should not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

APPROVED:

ss/Robyn Sorum  
Robyn Sorum, Chairwoman  
Cass County Board of Commissioners

ATTEST:

ss/Michael Montplaisir  
Michael Montplaisir, County Auditor

First Reading: September 21, 2009  
Second Reading: October 19, 2009  
Final Passage: October 19, 2009  
Publication: September 28, 2009

(SEAL)

HISTORICAL REFERENCE DATE: OCTOBER 19, 2009