

CHAPTER 12
INITIATIVE, REFERENDUM AND RECALL

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1-12-1: **DIRECT LEGISLATION:**

(A) The people of the City of Idaho Falls, in addition to the method of legislation otherwise provided, shall have the power of direct legislation by initiative and referendum.

(B) For the purposes of this Chapter, "initiative" means the right of the people at an election to adopt, amend or repeal legislation. "Referendum" means the right of the people at an election to reject legislation adopted by the City Council. (Ord. 2854, 12-16-10)

1-12-2: **APPROVAL OF INITIAL PETITIONS FOR INITIATIVE AND REFERENDUM:**

(A) Before beginning to circulate any petition for the referendum to the people of any ordinance passed by the City Council, or for any ordinance proposed by initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the Clerk an initial petition duly signed by at least twenty (20) qualified electors of the City. A full and correct copy of the ordinance or measure so proposed by initiative petition, or a full and correct copy of the ordinance or measure on which the referendum is demanded, as the case may be, shall be attached to such initial petition. An electronic or digital copy of the proposed ordinance or measure, in Word, WordPerfect or ASCII format, using such storage media as may be determined by the Clerk, shall also accompany the

filing. Ordinances proposed by initiative shall contain a blank line for the ordinance number and a descriptive title at the top of the page, an ordaining clause as required by Section 50-901, Idaho Code, separately numbered sections with descriptive section titles, signature lines for the Mayor and Clerk, and shall generally conform to the ordinance style determined by the Clerk. The Clerk shall, upon request, provide to the petitioners a sample copy of an ordinance conforming to such style. Upon request, the Clerk shall also provide to such persons one photocopy or digital copy of any ordinance or Chapter in the City Code which is proposed to be subject to referendum.

(B) Upon receipt of a complete petition conforming to the requirements of the preceding section, the Clerk shall expeditiously determine whether the petition contains the requisite number of signatures and conforms to the required ordinance style. In making such determination, the Clerk may consult with the Bonneville County Election Clerk in order to determine whether all signators on the petition are qualified electors. Upon completion of such determination, the Clerk shall forthwith notify the petitioner or petitioners of such determination. If the requisite number of signatures is reflected upon the petition, and the petition and accompanying measure are in proper form and style, the Clerk shall file the petition in his or her office and immediately transmit a copy of the petition to the City Attorney for the issuance of the certificate of review as provided in section three (3) of this Chapter.

(C) Initial petitions for referendum containing the requisite number of signatures shall be filed with the Clerk not less than sixty (60) days following final publication of the subject ordinance, as provided in § 50-901, Idaho Code.

(D) Concurrently with the filing of an initial petition for initiative or referendum, the petitioner or petitioners shall complete and deliver to the Clerk an application form stating his or her name, mailing address and telephone number. The application form shall be in such form as may be prescribed by the Clerk. (Ord. 2854, 12-16-10; Ord. 3365. 1-14-21)

1-12-3: REVIEW OF INITIATIVE AND REFERENDUM PETITIONS BY CITY ATTORNEY:

(A) After receiving a copy of the petition from the Clerk, the City Attorney may confer with the petitioner and shall, within twenty (20) business days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revisions or alterations of the measure as may be deemed necessary and appropriate. The recommendations of the City Attorney shall be advisory only and the petitioner may accept or reject them in whole or in part. The City Attorney shall issue and file a certificate of review with the Clerk certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been delivered to the petitioner. Such certificate shall be issued whether or not the petitioner accepts the City Attorney's recommendations. The certificate of review shall be available for public inspection in the office of the Clerk. Within fifteen (15) business days after the filing of the certificate of review, the petitioner, if he or she desires to proceed with sponsorship of the petition, shall file the measure with the Clerk who shall assign a number to the measure and shall forthwith submit to the City Attorney two (2) copies of the measure filed. Within five (5) business days after receiving such copies, the City Attorney shall provide a ballot title therefor and return one of said copies to the Clerk, together with the ballot

title so prepared by him. A copy of the ballot title as prepared by the City Attorney shall be furnished by the Clerk with his or her approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred. The approved ballot title shall be used and printed on each petition or copy thereof when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures. The ballot title shall contain (1) a distinctive short title not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition, and (2) a statement title expressing in not more than two hundred (200) words the purpose of the measure. In drafting such ballot title the City Attorney shall provide a true and impartial statement of the purpose of the measure. The ballot title shall be included as part of the measure when it is printed on the official ballot for any election to consider an initiative or referendum measure.

(B) Any person who is dissatisfied with the ballot title or the short title provided by the City Attorney, may petition to the District Court of Bonneville County, praying for a different title and setting forth the reason why the title prepared by the City Attorney is insufficient, prejudicial or unfair. No petition shall be allowed from the decision of the City Attorney on a ballot title unless the same is taken within twenty (20) days after the ballot title is filed in the office of the Clerk. The District Court of Bonneville County shall thereupon examine the measure, hear argument, and in its decision thereon certify to the Clerk a ballot title and a short title for the measure in accordance with this section. The Clerk shall print on the official ballot for any special election subsequently ordered, the title thus certified. Any qualified elector of the City may, at any time after the City Attorney has issued a certificate of review, bring an action in the District Court of Bonneville County to determine the constitutionality of any initiative.

(C) Upon printing of the petition with the measure number, and title page and ballot title approved by the City Attorney, or the Court, as the case may be, the petition shall be deemed final and may thereafter be circulated for signature in the manner described in the next section. Any petition circulated without compliance with sections two (2) and three (3) of this Chapter shall be void and shall not be submitted for public vote or approval until such compliance has been made. (Ord. 2854, 12-16-10; Ord. 3365, 1-14-21)

1-12-4: CIRCULATION OF FINAL PETITIONS:

(A) After the form of the initiative or referendum petition has been finally approved and a ballot title assigned, it may be circulated and signatures thereon sought by the person or persons whose organization or organizations under whose authority the measure is to be referred or initiated. Any person who physically circulates any petition for an initiative or referendum shall be a qualified elector of the City. All signatures affixed to each copy of the petition shall be signed in the presence of the person circulating such copy.

(B) All petitions for the initiative and for the referendum and copies circulated for signatures shall be printed on good quality bond or ledger paper in the form and manner as approved by the Clerk. Each petition and copy circulated shall have as its first page a cover page

which contains the short title and petition number as required under this Chapter. Before any petition or copy is circulated for signature, a full and correct copy of the measure so proposed by initiative petition shall be stapled or otherwise physically attached thereto. Each petition or copy may be separately numbered for convenience in handling. To every referendum and every copy of a referendum petition circulated for signature shall be similarly attached a cover page and a full and correct copy of the ordinance on which the referendum is demanded. Each such copy may also be separately numbered in like manner as initiative petitions.

(C) Initiative petitions shall be in substantially the following form:

Initiative Petition No. _____

WARNING

IT IS A MISDEMEANOR FOR ANYONE TO SIGN ANY INITIATIVE OR REFERENDUM PETITION WITH ANY NAME OTHER THAN HIS OWN, OR TO KNOWINGLY SIGN HIS NAME MORE THAN ONCE FOR THE MEASURE, OR TO SIGN SUCH PETITION WHEN HE IS NOT A QUALIFIED ELECTOR.

We, the undersigned, being qualified electors of the City of Idaho Falls, State of Idaho, hereby declare that we have read, or heard read at length, section by section, the proposed ordinance or measure attached hereto as Exhibit "A" and fully understand its contents, meaning and purpose, and believe it should become a law of the City for the following reasons: (here state the reasons in not more than two hundred (200) words).

We herewith request such ordinance or measure be submitted to a vote of the people, if not first passed by the City Council.

No. Date	Printed Name	Street	Address/City	Zip	Signature
1	_____	_____	_____	_____	_____
2	_____	_____	_____	_____	_____
3	_____	_____	_____	_____	_____
4	_____	_____	_____	_____	_____
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State of Idaho)
 : ss.
County of Bonneville)

I, _____, being first duly sworn, say: That I am a qualified elector of the City of Idaho Falls; that every person who signed this copy of the foregoing petition signed his or her name thereto in my presence; I believe that each signer has correctly stated his or her name, address and signature date and that each signer is a qualified elector of the City of Idaho Falls.

(Signature)
(Street address)

Subscribed and sworn to before me this ___ day of _____, 20____.

(Notary Seal) _____
Notary Public
State of Idaho
Residing at: _____

(D) Referendum petitions shall be in substantially the same form as initiative petitions, except they shall have the following caption "Referendum Petition No. ____" and shall contain the following petition language: "We, the undersigned, being qualified electors of the

City of Idaho Falls, Idaho, declare that we have read, or heard read in full (insert ordinance number subject to referendum) and we understand its contents, meaning and purpose and believe it should not become a law of the City for the following reasons: (State reasons why ordinance should not be passed in two hundred (200) words or less.) We request that a referendum vote be called on this ordinance at a special election called for such purpose."

(E) Any number of copies of the petition and proposed ordinance or referred ordinance may be circulated at the same time and when filed with the Clerk all shall be considered as one petition, but each copy of the petition must be separately numbered and verified by a qualified elector of the City prior to its filing with the Clerk.

(F) Any final petition or copy thereof circulated in violation of this Section or §§ 1-12-2 or 1-12-3 of this Chapter shall be void. Any signature signed in violation of this Section shall be void. (Ord. 2854, 12-16-10; Ord. 3365, 1-14-21)

1-12-5: FILING AND EXAMINATION OF FINAL INITIATIVE OR REFERENDUM PETITIONS:

(A) Each copy of an initiative or referendum petition with signatures thereon, accompanied by the proposed or referred ordinance physically attached to each such copy, shall be filed with the Clerk, along with a statement by the petitioner or petitioners requesting the filing of the petition and further requesting a special election be held on the measure attached to the petition. Such filing shall be made within one hundred eighty (180) days after the date of the Clerk's final approval in accordance with this Chapter. Multiple filings of the same petition or copies thereof shall not be permitted and any petition or copy thereof or signature sheet filed after the first filing of a final measure shall be void, provided however nothing herein shall be construed to prohibit the filing of additional signature sheets in accordance with subsection (C) of this section.

(B) In order to qualify for submission of the measure to the voters at a special election, the petition for initiative or referendum must be signed by qualified electors, the total number of which equals or exceeds twenty percent (20%) of the total number of voters who voted at the last general election of the City.

(C) Upon the filing of such final petition, the Clerk shall verify whether or not the petition is signed by the requisite number of qualified electors and otherwise conforms to state law and the provisions of this Chapter. Verification of the petition and the signatures thereon by the Clerk shall be required by Idaho Code Title 34, Chapter 18. The signatures affixed to the initial initiative or referendum petition shall be considered in determining whether the requisite number of signatures has been obtained and shall for such purposes be thereafter considered as part of the final petition. The Clerk shall attach to the petition a certificate showing the result of such examination and if the petition is found insufficient, the certificate shall state the reasons therefor and the changes necessary to conform to law. The Clerk may request the advice and counsel from the City Attorney for the purpose of determining the sufficiency of the petition. The Clerk's certificate shall be filed in the Clerk's office within fourteen (14) days after the petition was filed with the Clerk, and the Clerk shall notify the person filing such petition of

the filing of the Clerk's certificate, which notice shall be in writing and shall be delivered within three (3) business days after the filing of the certificate. If, by the Clerk's certificate, the petition is shown to be insufficient or defective, it may be amended, additional signatures added, or otherwise perfected, within thirty (30) days from the date of said certificate. If the petition is not so perfected and filed with the Clerk within such thirty (30) day time frame, the Clerk shall declare the petition null and void.

(D) Upon determining that the required number of signatures has been met and that the petition and signatures conform to the requirements of this Chapter, the Clerk shall issue a final certification and shall order an election be held on the next available election date allowed under Section 34-106, Idaho Code. The Clerk shall submit a copy of such certification and order to the Council at its next regular meeting, provided however, if the Clerk's certification is made less than two (2) business days prior to the next regular Council meeting, the certificate and order may be submitted to the Council at the next following regular Council meeting.

(E) If the Clerk shall refuse to accept, file or certify any petition for the initiative or for the referendum in proper form and with the requisite number of signatures of qualified electors thereto attached, or to order a special election as required under this Chapter, any citizen may apply, within ten (10) business days after such refusal, to the District Court for a writ of mandamus to compel the Clerk to do so. Alternatively, if the Clerk shall improvidently accept, file or certify any petition for the initiative or for the referendum, or improvidently order a special election, any citizen may similarly apply, within ten (10) business days after such acceptance, filing or certification, to the District Court for a writ of prohibition to prohibit such action. If the District Court grants the writ of mandamus, the Clerk shall then file the writ in his or her office, with a certified copy of the judgment or writ attached thereto, as of the date on which it was originally offered for filing in his office and shall proceed as directed by such writ. On a determination that a writ of prohibition should be granted, the court may enjoin the Clerk and any other elected or appointed officer from certifying or printing on the official ballot for the ensuing election the initiative or referendum measure which was the subject of such writ. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. (Ord. 2854, 12-16-10; Ord. 3365, 1-14-21)

1-12-6: REMOVAL OF SIGNATURES:

(A) The signer of any final initiative or referendum petition may remove his or her own name from the petition by crossing out, obliterating or otherwise defacing his or her own signature at any time prior to the time when the petition is presented to the Clerk for signature verification in accordance with this Chapter.

(B) The signer of any final initiative or referendum petition may have his or her name removed from the petition at any time after presentation of the petition to the Clerk but prior to issuance of the Clerk's certification in accordance with this Chapter, by presenting or submitting to the Clerk a signed statement that the signer desires to have his or her name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The Clerk shall immediately strike the signer's name from the petition and adjust the total number of certified signatures on the petition accordingly. The statement shall be attached

to and become a part of the initiative or referendum petition. (Ord. 2854, 12-16-10; Ord. 3365, 1-14-21)

1-12-7: DELIVERY OF NOTICES TO PETITIONER: Delivery of any notice required or allowed under this Chapter shall be presumed complete upon its physical delivery to the petitioner or petitioners, or upon its deposit into the U.S. mail, postage prepaid, certified mail, return receipt request, addressed to the address of the petitioner or petitioners specified in the application filed in accordance with Section 1-12-2 hereof. (Ord. 2854, 12-16-10)

1-12-8: SIGNATURE REQUIREMENTS: The requirements for signature, verification of valid petitions, printing of petitions and time limits, except as expressly modified herein, shall generally conform to Chapter 18, Title 34, Idaho Code. (Ord. 2854, 12-16-10)

1-12-9: SUBMISSION TO POPULAR VOTE:

(A) Unless the City Council shall, within twenty (20) days after the date of the Clerk's certificate and Order issued under Section 1-12-5 (D) hereto, pass the proposed ordinance without alteration, a special election shall be held on the next available date permitted under Section 34-106, Idaho Code for the purpose of submitting such ordinance to the electorate. If a majority of the electors voting on the proposed initiative measure vote in favor thereof, the same shall thereupon or at the time fixed therein, become effective as a City ordinance.

(B) Unless, the Council shall, within twenty (20) days after the date of the Clerk's certificate and Order issued under Section 1-12-5 (D) hereto, repeal a referred ordinance, a special election shall be held on the next available date permitted under Section 34-106, Idaho Code for the purpose of submitting such ordinance to the electorate. If a majority of the voters voting on the measure vote in favor of such repeal, the ordinance shall thereupon become null and void. (Ord. 2854, 12-16-10)

1-12-10: PROHIBITED ACTIONS; PENALTIES:

(A) It shall be unlawful for any person to knowingly sign his own name more than once to any petition allowed under this Chapter or to sign his name to any such petition knowing himself at the time of such signing not to be qualified to sign the same.

(B) Any person circulating a petition, who knows, or who in the exercise of reasonable care should know, that a signature is forged and who shall thereafter fail to strike through and thereby void such signature, and any person in a position of supervision of such person who suffers or permits a forged signature to remain on a petition filed with the Clerk, shall be guilty of a misdemeanor.

(C) It shall be unlawful for any person to knowingly make any false statement regarding his or her residency in a petition or to falsely represent his or her residency to any person circulating a petition, in order to induce the circulating person to allow such person to sign a petition under this Chapter.

(D) It shall be unlawful for any person who circulates a petition to swear to the oath required of persons who circulate a petition under this Chapter, if such person knows or has reason to know his or her oath is false in any material respect.

(E) It shall be unlawful for any person who has undertaken to circulate an approved petition to leave unattended any petition or copy thereof authorized under this Chapter for the purpose of gathering signatures in such person's absence.

(F) It shall be unlawful for any person submitting an application for an initial petition under Section 1-12-2 of this Chapter to refuse to allow any person to remove his or her name from a signed copy of a final petition, in the manner allowed under Section 1-12-6 hereof.

(G) It shall be unlawful for any person to physically attach a copy of the ordinance proposed by initiative or the ordinance proposed to be subject to referendum, to any initial or final petition that has been signed without such ordinance or measure attached thereto or to file or present for filing with the Clerk any such petition, with knowledge that the petition has been so altered.

(H) It shall be unlawful for any person to file in the office the Clerk any petition allowed under this Chapter to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto.

(I) It shall be unlawful for any person to circulate or cause to be circulated any petition allowed under this Chapter, knowing the same to contain false, forged or fictitious names.

(J) It shall be unlawful for any person to make any false affidavit concerning any petition allowed under this Chapter, or the signatures appended thereto.

(K) It shall be unlawful for any public official or employee to knowingly to make any false return, certification or affidavit concerning any petition allowed under this Chapter, or the signatures appended thereto. (Ord. 2854, 12-16-10; Ord. 3365, 1-14-21)

1-12-11: COMPUTATION OF TIME: All references to the term "day" or "days" shall be deemed to refer to a calendar day, unless specific reference is made to a "business" day. The term "business" day shall mean any day of the week between Monday and Friday inclusive, except legal holidays prescribed by Idaho Code Section 73-108. The time in which any act provided herein must be done shall be calculated in the manner set forth in Idaho Code Section 73-109. (Ord. 2854, 12-16-10)

1-12-12: SUBMISSION ON COUNCIL'S OWN MOTION: The Council may submit to popular vote, for adoption or rejection, at any election any initiative or referendum ordinance or measure in the same manner and with the same force and effect as provided herein. The Council

may also call a special advisory election to obtain a non-binding vote on any matter. (Ord. 2854, 12-16-10)

1-12-13: **FORM OF BALLOT:** The form of ballot and method of voting on any initiative or referendum petition shall be the same as in any general City election. If more than one initiative or referendum measure qualifies for the same election, then each measure shall be submitted on the ballot with a separate measure number, consistent with the ballot title and number determined by the City Attorney. (Ord. 2854, 12-16-10)

1-12-14: **PUBLICATION:** The Clerk shall publish every proposed initiative or referred ordinance at least twice in the official newspaper of this City before the date of the election at which such proposition or ordinance is to be voted upon. All special elections held pursuant to this chapter shall be conducted, the votes canvassed and the result declared, in the same manner as provided by law in respect to other City elections. (Ord. 2854, 12-16-10)

1-12-15: **INCONSISTENT MEASURES:** Nothing herein shall prevent two or more initiative measures concerning the same subject matter from being voted upon at the same election, provided however, if both initiative measures are approved and are inconsistent in any respect, the measure receiving the highest number of votes shall prevail, and the other shall entirely fail to become law. (Ord. 2854, 12-16-10)

1-12-16: **REQUIRED TIME BETWEEN ELECTIONS:** No special referendum or initiative election may be held upon any consecutive election day permitted under Idaho Code Section 34-106, with respect to any initiative or referendum measure concerning the same or substantially the same subject matter. (Ord. 2854, 12-16-10)

1-12-17: **LIMITATIONS ON RIGHT:** The right of initiative or referendum shall not be exercised with respect to any measure pertaining to issuance of bonds, tax levies, fiscal appropriations, planning or zoning matters, matters involving administrative discretion or any other matter in conflict with the Constitution and laws of the State of Idaho. Such right or rights shall, to the extent consistent with the Constitution of the State of Idaho, be limited to legislative matters and shall not be exercised to impair any vested contract or property right or deprive any person of due process of law. (Ord. 2854, 12-16-10)

1-12-18: **RECALL:** The Mayor and members of the City Council shall be subject to recall in accordance with Chapter 17, Title 34, Idaho Code. Appointive officers of the City shall not be subject to recall. (Ord. 2854, 12-16-10)