

CHAPTER 40-12 INITIATIVE AND REFERENDUM

40-12-01. Initiative and referendum apply only in commission and modern council cities.

The provisions of this chapter relative to the initiating and referring of municipal ordinances shall apply only in cities operating under the commission and modern council system of government.

40-12-02. Submission of proposed ordinance by petition - Filed with city auditor - Request in petition.

Any proposed ordinance may be submitted to the governing body of the municipality by a petition signed by qualified electors thereof equal in number to fifteen percent of the votes cast for all candidates for the executive officer at the preceding regular municipal election. The petition must be filed in the city 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 city if it is not passed by the governing body of the municipality.

40-12-03. Requirements of petitions for initiative and referendum.

Only qualified electors of the city may sign petitions provided for in this chapter. 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. It must also be accompanied by the affidavit of one or more qualified electors of the city stating that the signers were qualified electors of the city at the time of signing and the number of signers upon the petition at the time when the affidavit was made.

40-12-04. Signatures to petition - Requirements - Oath - Withdrawal.

The signatures to a petition to initiate or refer an ordinance need not all be appended to one paper. One of the signers of each paper shall make an oath before an officer competent to administer oaths that the person believes the statements in the paper to be true and that each signature to the paper is the genuine signature of the person whose name it purports to be. Any petitioner may withdraw that petitioner's name from a petition within five days after the date of the filing of the petition with the city auditor.

40-12-05. City auditor to determine sufficiency of initiative petition - Certificate attached to petition.

Within ten days after the filing of a petition to initiate an ordinance, the city 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 governing body of the municipality shall allow such extra help for the examination of the petition as it deems necessary. The city auditor shall attach to the petition the city auditor's certificate showing the result of the examination and if the petition is insufficient, the city auditor shall state in the city auditor's certificate the reasons therefor. If the city auditor's certificate shows the petition to be insufficient, it may be amended within ten days from the date of the certificate. Within ten days after any such amendment, the city auditor shall make an examination of the amended petition, and if the city 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 city auditor shall submit it to the governing body of the municipality without delay.

40-12-06. Duty of governing body after receiving petition for proposed ordinance.

After receiving the petition for the initiation of a proposed ordinance, the governing body of the municipality shall:

1. Pass the ordinance without alteration within twenty days after the attachment of the auditor's certificate to the accompanying petition;

2. Call a special election, unless a general city election is fixed within ninety days thereafter, and submit to the vote of the qualified electors of the municipality the initiated ordinance without alteration; or
3. If the petition is signed by not less than twenty-five percent of the qualified electors as defined in section 40-12-02, pass the ordinance without change within twenty days after the filing of the petition or submit the initiated ordinance at the next general municipal election, if the election occurs not more than thirty days after the city auditor's certificate of sufficiency is attached to the petition, and if no general municipal election is to be held within thirty days after the city auditor's certificate of sufficiency is attached to the petition, it shall call a special election.

40-12-07. 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 municipality. 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 so long as the municipality remains under the commission system of government.

40-12-08. Petition to refer ordinance - Suspension of ordinance - Requirements of petition.

An ordinance which has been adopted by the governing body of a municipality may be referred to the qualified electors of the municipality by a petition protesting against such ordinance. Such petition shall be signed by qualified electors of the municipality equal to at least ten percent of the entire vote cast for all candidates for executive officer of the municipality at the preceding regular municipal election and shall be presented to the governing body of the municipality within ten days and before four p.m. on the tenth day after the ordinance described in the petition became effective. If a petition is mailed to the governing body of the municipality, it shall be in the possession of such body before four p.m. on the tenth day after the ordinance became effective. Unless the ordinance protested against was passed by a four-fifths vote of the members of the governing body of the municipality 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 petition provided for in this section shall be in all respects in accordance with the provisions of sections 40-12-02, 40-12-03, and 40-12-04, except as to the number of signers required, and shall be examined and certified by the city auditor in all respects as provided in section 40-12-05.

40-12-09. Referred measure - Submission - Result of election.

When a referendum petition is filed, the governing body of the municipality 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 municipality at the next regular municipal election or at a special election to be called for that purpose as provided in section 40-12-06. The 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.

40-12-10. No limitation on number of ordinances that may be voted on at one election - Limitation on special elections.

Any number of proposed or referred ordinances may be voted on at the same election in accordance with the provisions of this chapter. There shall be not more than one special election in any period of six months for such purposes.

40-12-11. Publication of proposed or referred ordinance or proposition before election.

The city auditor shall cause any ordinance or proposition to be submitted to the electors under this chapter to be published once in each newspaper published in the municipality. The publication shall be made not more than twenty days nor less than five days before the submission of the ordinance or proposition to a vote.

40-12-12. 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 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. _____ relating to _____ (stating the nature of the proposed ordinance) approved by the board of city commissioners be approved?

Yes

No

40-12-13. Propositions submitted for repeal or amendment to initiated or referred ordinance - Election - Vote required.

The governing body of the municipality may submit a proposition for the repeal of or an amendment to an ordinance adopted under the provisions of this chapter. The proposition shall be voted upon at any succeeding regular municipal election. If the proposition submitted receives a majority of the votes cast thereon at such election, the ordinance shall be repealed or amended, as the case may be.