
CHAPTER 6

MUNICIPAL AND TOWNSHIP INITIATIVE AND REFERENDUM

DEFINITIONS

“Initiative” is the power of the electors to place a proposed municipal ordinance or other measure on the ballot for approval by the electors.

“Referendum” is the power to place an ordinance or other measure enacted by a municipal legislative authority on the ballot for approval or rejection by the electors.

EXERCISE OF POWERS

In most cases, the powers of initiative and referendum may be exercised in all legislative matters subject to the control of the municipal corporation’s legislative authority (See generally, Ohio Constitution Art II, §1f).

However, the Ohio Supreme Court has held that the “administrative actions” of a municipal legislative authority are not subject to initiative or referendum proceedings. *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton*

Cty. Bd. of Elections (2007), 115 Ohio St.3d 437. Actions by a municipal legislative authority that create new laws, ordinances, or regulations are legislative in nature and will likely be subject to initiative and referendum proceedings. Actions by a municipal legislative authority that merely execute or administer existing laws, ordinances, or regulations are administrative in nature and not subject to initiative and referendum proceedings.

A. Statutory provisions (R.C. 731.28 to 731.40)

The initiative and referendum procedures outlined in this chapter are to be followed unless there are specific constitutional, statutory, or charter provisions that would otherwise control.

B. Charter cities (R.C. 731.41)

Municipal charters that provide procedures for implementing the powers of initiative and referendum will

control over the Revised Code. However, charter municipalities are not required to establish their own initiative and referendum provisions or procedures. When a municipal charter does not contain provisions for initiative and referendum, the applicable statutory provisions apply. Similarly, courts may apply provisions of the Revised Code when a municipal charter is silent or ambiguous on a particular point.

Note: Questions about municipal charter provisions should be directed to the legal authority of the municipality, such as the village solicitor or the city attorney.

C. Municipal plans of government (R.C. 705.91)

Cities operating under the commission plan, the city manager plan, or the federal plan are subject to the statutory provisions relative to initiative and referendum procedures.

SCOPE OF THE POWERS OF MUNICIPAL AND TOWNSHIP INITIATIVE AND REFERENDUM

A. Municipal corporations

As a general rule, the electors of a municipal corporation may exercise the powers of initiative and referendum on any matter on which that municipal

corporation's legislative authority would have the power to legislate.

1. Constitutional exception

There is no initiative power to require the purchase or acquisition of public utilities. Article XVIII, section 5 of the Ohio Constitution provides that the purchase or acquisition of a public utility by a municipality may be done only by ordinance, and that the ordinance may not take effect until 30 days after the date of its passage. The exercise of the power of referendum on any such issue requires the following:

A petition such as SoS Form 6-J (Referendum Petition - Municipality or Home Rule Township) signed by 10 percent of the electors of the municipality, based upon the total number of votes cast in that municipality at the most recent general municipal election, that is filed with the municipality's executive authority during the 30-day period after passage of the ordinance (See Filing fees in Chapter 12).

NOTE: Elections on the question of purchasing a public utility are subject to the same provisions as elections on the question of authorizing a municipal charter commission (Article XVIII, Section 8, Ohio Constitution).

2. Statutory exceptions to the referendum (R.C. 731.30)

Municipal corporations that are subject to the provisions of the Revised Code are subject to the following statutory limitations on the use of referendums:

- a. Where a series of ordinances are enacted to make or pay for a public improvement, the statutory initiative and referendum provisions (R.C. 731.28 - 731.41) apply only to the first ordinance or measure of the series.
- b. When an ordinance is required to go into immediate effect and is passed by a two-thirds vote of the legislative authority there is no power of referendum. Ordinances that go into immediate effect include:
 - i. Ordinances that provide money to meet the current expenses of the municipal corporation.
 - ii. Ordinances that provide for street improvement where petitioned for by the owners of the majority of the street front of the property benefitted and paid for by assessments of the owners of the property benefitted.
 - iii. Emergency measures necessary for the preservation of the public peace, health, or safety.

Note: Although the above-mentioned ordinances are not subject to the provisions for municipal referendum, there are no provisions preventing the repeal of any of those ordinances by an initiated ordinance, notwithstanding the possible intervention of third parties.

3. Municipal zoning

Zoning measures may be treated differently than other initiatives or referendums (See Chapter 7 of this handbook titled Zoning for detailed information on zoning initiatives and referendums).

4. Charter amendment initiative (Ohio Const. Article XVIII, Section 9)

The procedure to amend a municipal charter is set forth in the Ohio Constitution. The question of whether to amend a charter may be proposed by the municipal legislative body or by petition of voters. If the amendment is proposed by the legislative body a two-thirds vote of that body is necessary to submit the question to the voters. If it is proposed by petition, it requires the signatures of 10 percent of the total vote cast as determined by the last general municipal election of the municipality. If any such amendment is approved by a majority of the voters voting thereon, it becomes part of the municipality's charter (See Chapter 10).

B. Townships

Only townships that have adopted a limited form of self-government generally may exercise the power of initiative and referendum, as provided in R.C. 504.14. However, the Revised Code contains specific provisions that allow any township, self-governing or not, to exercise the power of initiative or referendum. Examples of these initiative or referendum include:

1. Building codes and amendments (R.C. 505.75)

The building code and any amendment to the building code adopted by the board of township trustees may be subject to referendum within 30 days of their adoption.

2. Optional limited self-government (R.C. 504.01)

The question of whether to adopt an optional limited self-government may be proposed by initiative petition.

3. Adult oriented businesses (R.C. 503.53)

The question of adopting, amending, or rescinding resolutions that regulate or restrict adult oriented businesses that sell, offer for sale, or distribute material that is harmful to juveniles or obscene may be proposed by initiative petition.

4. Township zoning

Zoning measures are treated differently than other initiatives or referendums (See Chapter 7).

C. Joint Economic Development Districts (“JEDDs”)

1. Creation

R.C. 715.70 and 715.71 provide for the creation of taxing authorities called “joint economic development districts” (JEDDs) by certain coalitions of political subdivisions:

- a. Municipal corporations and townships within a county that has adopted a charter under Sections 3 and 4 of Article X, Ohio Constitution.
- b. Municipal corporations and townships that have created a joint economic development district comprised entirely of real property owned by a municipal corporation at the time the district was created under R.C. 715.70.
- c. Municipal corporations or townships that are part of or contiguous to a transportation improvement district created under Chapter 5540. of the Revised Code and that have created a joint economic development district under R.C. 715.70 or 715.71 prior to November 15, 1995.
- d. Municipal corporations that have previously entered into a contract creating a joint

economic development district pursuant to R.C. 715.70(A)(2), even if the territory to be included in the district does not meet the requirements of that division.

2. Referendum of contract creating JEDD under R.C. 715.70

R.C. 715.70(D)(3) provides that any resolution of the board of township trustees that approves a contract creating a JEDD under R.C. 715.70 is subject to a referendum of the electors of the township. When a referendum petition, signed by 10 percent of the number of electors in the township who voted for the office of governor at the most recent gubernatorial election, is presented to the board of township trustees within 30 days after the board of township trustees adopted the resolution, ordering that the resolution be submitted to the electors of the township for their approval or rejection, the board of township trustees must, after 10 days and not later than 4 p.m. of the 90th day before the election, certify the text of the resolution to the board of elections. The board of elections must submit the resolution to the electors of the township for their approval or rejection at the next general, primary, or special election occurring more than 90 days after the petition was certified to the board of elections.

3. Election on income tax levied under R.C. 715.70

R.C. 715.70(F) provides that a JEDD's board of directors may have the power to adopt a resolution to levy an income tax within the district. The income tax must be used for the purposes of the district and for the purposes of the contracting municipal corporations and townships set forth in the contract that created the JEDD. The income tax may be levied in the district based on income earned by persons working or residing within the district and based on the net profits of businesses located in the district. The income tax must follow the provisions of Chapter 718. of the Revised Code, except that a vote is required by the electors residing in the district to approve the rate of income tax. The rate of the income tax shall be no higher than the highest rate being levied by a municipal corporation that is a party to the JEDD contract. If no electors reside within the district, then R.C. 715.70(F)(4) applies.

a. Within 180 days after the first meeting of the JEDD's board of directors, the JEDD board may levy an income tax, provided that the rate of the income tax is first submitted to and approved by the electors of the district at the succeeding regular or primary election, or a special election called by the board, occurring more than 90 days after a

certified copy of the resolution levying the income tax and calling for the election is filed with the board of elections. If the electors approve the levy of the income tax, the income tax will be in force for the full period of the contract establishing the district.

- b. Any increase in the rate of an income tax that was first levied within 180 days after the first meeting of the board of directors must be approved by a vote of the electors of the district, shall be in force for the remaining period of the contract establishing the district, and shall not be subject to referendum or repeal under R.C. 715.70(F)(2).

4. Notice of income tax adopted under R.C. 715.70

R.C. 715.70(F)(6)(a) requires the JEDD board to publish or post public notice within the district of any resolution adopted levying an income tax in the same manner required of municipal corporations under sections 731.21 and 731.25 of the Revised Code.

5. Referendum on income tax levied under R.C. 715.70

Any resolution of the JEDD's board of directors levying an income tax that is adopted more than 180 days after the first meeting of the board is subject to a referendum as provided in R.C. 715.70(F)(2).

When a referendum petition, signed by 10 percent of the number of electors in the district who voted for the office of governor at the most recent gubernatorial election, is filed with the county auditor of each county within which a party to the contract is located within 30 days after the resolution is adopted by the board, the county auditor of each such county, after 10 days and not later than 4 p.m. of the 90th day before the election, must certify the text of the resolution to the board of elections of that county. The county auditor of each such county retains the petition. The board of elections must submit the resolution to such electors, for their approval or rejection, at the next general, primary, or special election, occurring more than 90 days after the petition was certified to the board of elections.

Except as may be otherwise specified by R.C. 715.70, any referendum or initiative proceeding within a district must be conducted in the same manner as is required for such proceedings within a municipal corporation pursuant to R.C. 731.28 - 731.40.

6. Initiative to amend or repeal income tax levied under R.C. 715.70

Any resolution of the JEDD board of directors levying an income tax that is adopted more than 180 days after the first meeting of the board

is subject to an initiative proceeding to amend or repeal the resolution levying the income tax as provided in R.C. 715.70(F)(2).

When an initiative petition, signed by 10 percent of the number of electors in the district who voted for the office of governor at the most recent gubernatorial election, is filed with the county auditor of each such county ordering that a resolution to amend or repeal a prior resolution levying an income tax be submitted to the electors within the district for their approval or rejection, the county auditor of each such county, after 10 days and not later than four p.m. of the 90th day before the election, must certify the text of the resolution to the board of elections of that county. The county auditor of each such county retains the petition. The board of elections must submit the resolution to such electors, for their approval or rejection, at the next general, primary, or special election, occurring more than 90 days after the petition was certified to the board of elections.

Except as may be otherwise specified by R.C. 715.70, any referendum or initiative proceeding within a JEDD must be conducted in the same manner as is required for such proceedings within a municipal corporation pursuant to R.C. 731.28-731.40.

7. Election

Whenever a JEDD is located in the territory of more than one contracting party, a majority vote of the electors, if any, in each of the several portions of the territory of the contracting parties constituting the district approving the levy of the tax is required before it may be imposed (R.C. 715.70(F)(3)).

If there are no electors residing in the JEDD, no election for the approval or rejection of an income tax shall be held under R.C. 715.70, provided that where no electors reside in the district, the maximum rate of the income tax that may be levied shall not exceed one percent.

8. Election on alternative procedure and requirements for creating district – R.C. 715.71

R.C. 715.71(A) provides alternative procedures and requirements to those set forth in R.C. 715.70 for creating and operating a JEDD. Divisions (B), (C), (D)(1) to (3), and (F) of Revised Code section 715.70 do not apply to a JEDD established under this section. However, R.C. 715.71(A), (D)(4), (E), (G), (H), (I), (J), and (K) of section 715.70 do apply to a district established under R.C. 715.71.

As set forth in R.C. 715.71(B), one or more municipal corporations and one or more townships may enter into a contract approved by

the legislative authority of each contracting party pursuant to which they create as a JEDD one or more areas for the purpose of facilitating economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in this state and in the area of the contracting parties. The district created must be located within the territory of one or more of the contracting parties and may consist of all or a portion of such territory. The JEDD's boundaries must be described in the contract or in an addendum to the contract. The area or areas of land to be included in the district cannot include any parcel of land owned in fee by or leased to a municipal corporation or township, unless the municipal corporation or township is a party to the contract or has given its consent to have its parcel of land included in the district by the adoption of a resolution.

Pursuant to R.C. 715.70(E), within 30 days after the filing under R.C. 715.71(D), the legislative authority of each county within which a party to the JEDD contract is located must adopt a resolution acknowledging the receipt of the required documents, approving the creation of the JEDD, and directing that the resolution of the board of township trustees approving the contract be submitted to the electors of the township for

approval at the next succeeding general, primary, or special election. The legislative authority of the county must file with the board of elections at least 90 days before the day of the election a copy of the resolution of the board of township trustees approving the contract. The resolution of the legislative authority of the county also shall specify the date the election is to be held and shall direct the board of elections to conduct the election in the township. If the resolution of the legislative authority of the county is not adopted within the 30-day period after the filing under R.C. 715.71(D), the JEDD will be deemed approved by the county legislative authority. The board of township trustees then must file its resolution with the board of elections for submission to the electors of the township for approval at the next succeeding general, primary, or special election at least 90 days before the specified date the election is to be held and shall direct the board of elections to conduct the election in the township.

If a majority of the electors of the township voting on the issue vote for the resolution and contract, the resolution shall become effective immediately and the contract shall go into effect immediately or in accordance with its terms.

9. Form of ballot for R.C. 715.71 election

(See Appendix B for sample ballot language).

10. When election on income tax levied under R.C. 715.71 not required

The JEDD contract must enumerate the specific powers, duties and functions of the JEDD's board of directors and shall provide for the determination of procedures that are to govern the board of directors. The contract may grant to the JEDD board the power to adopt a resolution to levy an income tax within the district. The income tax must be used for the purposes of the district and for the purposes of the contracting municipal corporations and townships pursuant to the contract. The income tax may be levied in the district based on income earned by persons working or residing within the district and based on the net profits of businesses located in the district. The income tax of the district must follow the provisions of Chapter 718. of the Revised Code, except that no vote shall be required by the electors residing in the district. The rate of the income tax cannot be higher than the highest rate being levied by a municipal corporation that is a party to the contract.

**STATUTORY
PROCEDURES FOR
THE USE OF
INITIATIVE AND
REFERENDUM
POWERS**

(R.C. 504.14, 731.28 - 731.40)

Note: The following procedures may not apply to a municipality operating under a charter that contains separate provisions for the exercise of municipal initiative and referendum powers.

A. Preliminary filings (R.C. 731.32)

Whoever seeks to propose an ordinance or measure in a municipal corporation or township by initiative petition or files a referendum petition against any enacted ordinance or measure must, before circulating the petition, file a certified copy of the proposed ordinance (initiative) or enacted ordinance (referendum) with the appropriate public officer: city auditor, township fiscal officer, or village clerk.

A "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original proposed ordinance or measure or of the original ordinance or measure.

Note: This filing must be completed even though a copy of the ordinance to be put

on the ballot by referendum may already have been filed with the city auditor, township fiscal officer, or village clerk.

B. Petition

Initiative or referendum petitions seeking to place ordinances or other measures on the ballot generally must contain the signatures of at least 10 percent of the number of electors who voted for governor within the municipality or township at the last general election at which the governor was elected (R.C. 504.14, 731.28, 731.29). In the case of petitions involving building codes, the required percentage of electors' signatures is 8 percent (R.C. 505.75).

For the convenience of petitioners, the Secretary of State's office has prescribed very basic petition forms for municipal or home rule township initiatives (SoS Form No. 6-I, Initiative Petition – Municipality or Home Rule Township) and referendums (Form No. 6-J, Referendum Petition – Municipality or Home Rule Township). Petitioners may adapt the Secretary of State forms to satisfy the applicable statutory or charter provisions.

1. Signature requirements (R.C. 731.31; R.C. 3501.38)

- a. Each signature must be in ink.
- b. Each petition must contain the date of signing and the address of the signer, including his/her street and number.
- c. Each signer of any initiative or referendum petition must

be a registered elector in the municipality or township in which the ordinance or measure is to be placed on the ballot.

- d. Each petition or part-petition must contain a statement of the circulator that, to the best of his or her knowledge and belief, each of the signers is a resident of the municipality or township, and each signature is that of the person whose signature it purports to be.

2. Text (R.C. 731.31)

- a. Initiative petitions or part-petitions must contain the title and a full and complete text of the ordinance or other measure to be placed on the ballot.
- b. Referendum petitions or part-petitions must contain the number and a full and correct copy of the title of the ordinance or other measure to be referred.

3. Penalty notice (R.C. 731.33)

At the top of each initiative or referendum petition or part-petition, the following warning must be printed in red:

“Notice: Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.”

4. Filing committee (R.C. 731.34)

A filing committee of no less than three of the petitioners may be listed as the filers of an initiative or referendum petition.

5. Statement of expenditures (R.C. 731.35)

The circulator of an initiative or referendum petition or his agent must, within five days after the petition is filed with the city auditor, township fiscal officer, or village clerk, file an itemized statement, made under penalty of election falsification, showing the following in detail:

- a. All moneys or things of value paid, given, or promised for circulating the petitions.
- b. Full names and addresses of all persons who contributed anything of value to be used in circulating the petitions.
- c. Full names and addresses of all persons to whom the payments or promises were made.
- d. Time spent and salaries earned while circulating or soliciting signatures to petitions by persons who were regular salaried employees of some person who authorized them to solicit signatures for or to circulate the petition as part of their regular duties.

C. Filing

Petitions for a municipal initiative or referendum must be filed with the city auditor or village clerk. Petitions for a township initiative or referendum must be filed with the township fiscal officer (See Filing fees in Chapter 12).

1. Initiative

There is no specific date for the filing of an initiative petition. However, the date on which an initiative petition is filed will determine at which election that issue will be submitted to the electors.

2. Referendum

Municipal ordinances and other measures which are subject to referendum do not take effect until 30 days after they are filed with the mayor of a city, or passed by the township trustees or village council. Exceptions to this rule are contained on pages 6-2 and 6-3 herein. Referendum petitions must be filed during the 30-day period before the ordinance becomes effective. When an ordinance or other measure is passed over the veto of a mayor, the petition must be filed within 30 days from that date (R.C. 731.29).

D. Text of the ordinance certified to board of elections (R.C. 731.28, 731.29, 731.34)

Upon receiving initiative or referendum petitions, the city auditor, township fiscal

officer, or village clerk must retain the petitions and make them available for public inspection for 10 days. At the end of the 10-day period, the city auditor, township fiscal officer, or village clerk must transmit a certified copy of the measure or ordinance and the petition to the board of elections. Regarding referendums, the city auditor, township fiscal officer, or village clerk must also ensure that the certified copy of the measure or ordinance is transferred to the board of elections not later than 4 p.m. of the 90th day before the day of election.

The board of elections must examine the signatures and return the petition to the city auditor, township fiscal officer, or village clerk within 10 days of receipt with a statement attesting to the number of voters who signed the petition. If the number of valid signatures is sufficient and the petition is otherwise valid, the city auditor, township fiscal officer, or village clerk must certify the sufficiency and validity of the petition back to the board of elections.

E. Validity (R.C. 731.31)

The initial duty of determining the validity of an initiative or referendum petition rests with the city auditor, township fiscal officer, or village clerk in consultation with their legal counsel. In determining the validity of the petition all signatures that are found to be irregular must be rejected. However, the board of elections must make its own determination of the sufficiency and validity of initiative and

referendum petitions. R.C. 3501.11(K); *State, ex rel. Kennedy v. Cuyahoga County Board of Elections* (1976), 46 Ohio St.2d 37.

F. Submission of question or issue to voters

The board of elections must submit the ordinance or other issue proposed by the initiative or referendum petition to the voters of the municipality at the next general election occurring more than 90 days after the final certification of the petition by the city auditor, township fiscal officer, or village clerk (R.C. 731.28, 731.29).

1. Ballot (See example in Appendix B)

The ballot need not contain the full text of the ordinance or measure. If a condensed text is used, it must properly describe the question up for a vote, and a full text of the ordinance or measure, together with the percentage of “yes” votes necessary for passage, must be posted at each polling place in a spot that is easily accessible to the voters (R.C. 3505.06).

2. Publication

There are no specific provisions concerning the publication of notice of an election at which an initiative or referendum ordinance is to be submitted to the voters. However, the board must give notice of any election by proclamation or by publication in a newspaper in the

county or a newspaper of general circulation in the county once at least 10 days before the election (R.C. 3501.03).

3. Passage

If a majority of the voters vote “yes” on a municipal ordinance or measure, it passes. A tie vote results in the issue being defeated (R.C. 731.28, 731.29).

4. Effective date

Ordinances proposed by an initiative or referendum petition receiving a majority “yes” vote are effective five days after the day on which the board of elections certifies the official vote on the question (R.C. 731.31).

