

TO: Direct Accountability Subcommittee
FROM: M. Freeman Durham
DATE: 18 December 2014
RE: Charter Amendments; Initiatives and Referenda

The process for Charter amendments, and for initiatives and referenda, are generally fixed by state law. While there is some flexibility to make the initiative and referendum process easier or harder, there are costs to doing so.

Charter Amendments

The Ohio Constitution, Article XVIII, Section 9, governs the amendment of a city's charter. It provides:

Amendments to any charter framed and adopted as herein provided **may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority** thereof, **and upon petitions signed by ten per centum of the electors** of the municipality setting for the any such proposed amendment, **shall be submitted by such legislative authority**. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the General Assembly, notice of proposed amendments may be given by newspaper advertising. **If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality.** A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote. [emphasis added]

This process cannot be changed without an amendment to the Ohio Constitution. This is the reason that the Cincinnati City Charter does not have any provisions in it regarding the amendment process.

Related to this rule, Ohio Constitution, Article XVIII, Section 14 tells us "The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

To paraphrase these rules, a proposed amendment can be submitted two ways. First, City Council, by a two-thirds vote, may put a proposed amendment on the ballot. Second, upon receipt of a petition signed by registered voters at least equal to 10% of the total who voted in the last general election, the City Council must put the proposed amendment on the ballot. The

amendment will be adopted by a simple majority vote. A requirement for a supermajority vote is not permitted.

Initiatives and Referenda

The Ohio Constitution, Article II, Section 1a through 1e, governs the initiative and referendum rules for state government. Section 1f provides that the initiative and referendum rules are also to apply to city government and are to be “exercised in the manner now or hereafter provided by law.”

The Ohio Revised Code Section 731.28 provides how city ordinances may be proposed by initiative petition. Section 731.29 provides for how ordinances passed by the city’s legislative body are subject to referendum and how, if the requisite petitions are delivered, the ordinances are suspended until such vote. Section 731.30 excludes from the referendum process (1) subsequent legislation to pay for a public improvement after the first measure to pay for such improvement is passed, (2) legislation providing for appropriations for current expenses, (3) legislation providing for street improvements petitioned for by the owners of a majority of the feet front benefited thereby and to be specially assessed, (4) emergency ordinances “necessary for the immediate preservation of the public peace, health, or safety”. It specifies that emergency ordinances must be passed by a two-thirds vote of the total members of the legislative authority, and must set out the reasons for the necessity. Sections 731.31 through 731.40 provide rules related to petitions. Section 731.41 provides: “Sections 731.28 to 731.41, inclusive, of the Revised Code to not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative matters.”

The Cincinnati City Charter, Article II, Section 3, provides that initiatives and referenda are to be subject to the initiative and referendum rules found in state law.

Accordingly, the Cincinnati City Charter could be amended to make initiatives and referenda easier than provided under state law. To do so would help make it more likely that the initiative and referendum process would be used more often than a Charter amendment process. However, making it easier to propose initiatives and referenda would generally be expected to impose additional election costs on the city.

Likewise, the Cincinnati City Charter could be amended to make initiatives and referenda harder than provided under state law. However, making it harder to propose initiatives and

referenda would just reinforce the tendency to make every issue the subject for a Charter amendment.

Finally, the Cincinnati City Charter could be amended to narrow the definition of “emergency,” which could make more ordinances subject to the referendum process. To do so would mean that more ordinances would have to wait for 30 days to pass (the period during which referendum signatures may be gathered) before taking effect.