

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV



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INTERIM ADMINISTRATOR MEAGAN WOLFE

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TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
Milwaukee County Election Commission
City of Milwaukee Election Commission

FROM: Meagan Wolfe
Interim Administrator

Michael Haas
Staff Counsel

SUBJECT: Advisory Referendum Petitions Frequently Asked Questions

Occasionally the Wisconsin Elections Commission receives inquiries regarding the process for reviewing petitions requesting a local advisory referendum election and the process for conducting such elections. In addition, it has become increasingly popular for interested groups to organize coordinated campaigns promoting advisory referendum petitions at the municipal and county levels on specific topics in order to encourage state or federal policymakers to consider the results of referendum elections regarding the same or similar questions. In the minds of some, advisory referendum elections can be an important opportunity for public input into policymaking decisions. To others, an advisory referendum election is simply a “glorified straw poll” and detracts from the principles of representative democracy.

As a general matter, the definition of “referendum” in Wis. Stat. § 5.02(16s) includes elections involving advisory, validating or ratifying questions. Therefore, if an advisory referendum election is ordered by a governing body, it must comply with the administrative requirements of other elections. But there is no right of citizens to petition for an advisory election contained in the Wisconsin Constitution or Wisconsin Statutes. Nevertheless, citizens and local policymakers sometimes advocate using an advisory referendum election to gauge the public’s support for or opposition to either specific projects or policy decisions. Advisory referendum petitions are distinct from direct legislation petitions which may be submitted in Wisconsin cities and villages, the review and processing of which are governed by Wis. Stat. § 9.20.

With that background, following is a summary of guidance which the WEC and its predecessor agencies, the Government Accountability Board and the State Elections Board, have provided to local election officials regarding advisory referendum petitions and elections.

1. What are the options for a local jurisdiction which receives a petition requesting an advisory referendum?

Because there is no right to petition for an advisory referendum, a municipality or county has a range of options after receiving such a petition. For instance, the jurisdiction may take no action regarding the petition, may review the petition to determine the number of valid signatures on the petition, may discuss the petition and its subject matter at a meeting of the governing body, or may order that an advisory referendum election take place posing the question listed in the petition or some alternative form of the question approved by the governing body.

Depending on the timing of the petition's submission to the clerk in relation to the next meeting of the governing body, the clerk may wish to seek the governing body's direction regarding whether or not to review the petition. Alternatively, the clerk may review the petition to determine the number of valid signatures and present those findings to the governing body for its consideration. There is no legal obligation for a clerk to process or review an advisory referendum petition unless directed to do so by the governing body.

2. If the clerk or governing body wish to process and review an advisory referendum petition, what are the requirements for the form of the petition?

Wis. Stat. § 8.40 governs the requirements of election petitions, including for a referendum. That statute requires election petitions to include the heading "Petition" as well as the signature, address and printed name of each signer, along with the certification of the circulator. The sufficiency of petition signatures is further governed by EL Ch. 2, Wis. Adm. Code. It should be noted, however, that a governing body may choose to order an advisory referendum on a particular topic despite any deficiencies in a petition requesting such an election.

3. If the clerk or governing body wish to process and review an advisory referendum petition, how many valid signatures are required for the petition to be sufficient?

Because there is no statutory requirement that a governing body act on an advisory referendum petition, there is also no requirement that a municipal or county clerk review such a petition, and there is no standard for determining the number of signatures which make it sufficient, absent a directive from the governing body.

In comparison, petitions requesting direct legislation require valid signatures equal to at least 15 percent of the votes cast for governor at the last gubernatorial election in the city or village, and recall petitions require valid signatures equal to at least 25 percent of the votes cast for governor at the last election within the same district as that of the officeholder being recalled. Governing bodies may take these requirements into account when assessing the support indicated by an advisory referendum petition, but they do not govern the treatment of such petitions.

4. What are the deadlines for the clerk to review an advisory referendum petition and for the governing body to act on it?

Because there is no statutory requirement to act on an advisory referendum petition, there are no deadlines for the clerk to review the petition signatures, or for the governing body to consider or act on such a petition. Again, the timelines for the review of recall petitions (31 days under Wis. Stat. § 9.10(3) and (4)) and for acting on a direct legislation petition (30 days following clerk's certification under Wis. Stat. § 9.20(4)) may be instructive but are not binding for advisory referendum petitions.

If a local governing body wishes to order an advisory referendum election, the question must be delivered to the clerk responsible for preparing the ballot at least 70 days prior to the election at which the measure will appear on the ballot. Typically, this means that municipal referendum questions to be included on a regular election ballot must be filed with the county clerk at least 70 days before the election, and that advisory referendum questions to be voted on at a municipal special election must be approved and filed with the municipal clerk under the same deadline. The clerk responsible for preparing the ballot has discretion to include the question on the ballot if it is filed later than 70 days prior to the election, if doing so will not delay the preparation and delivery of ballots to absentee voters.

For the 2018 General Election on November 6, 2018, the 70-day deadline is August 28, 2018.

5. May a local governing body order the scheduling of an advisory referendum within its jurisdiction absent the submission of a petition?

Yes, both the Legislature and local governing bodies may authorize and order an advisory referendum election independent of a petition request. An advisory referendum election may be scheduled to occur on the same date as a regularly scheduled election or as a special election.

6. If a governing body orders an advisory referendum election, what procedural requirements apply to the conduct of the election?

An advisory referendum election is a public election subject to all of the procedural requirements as other elections, including the posting and publication of election notices; responsibilities of clerks, special voting deputies and election inspectors; absentee ballot procedures; use of electronic voting equipment; and canvassing of election results. Specifically, Wis. Stat. § 5.64(2) governs the form of the referendum ballot. Also, in the case of an advisory referendum that is not scheduled on the date of a regular election, Wis. Stat. § 8.55 governs election notice requirements for a special referendum.

7. May an advisory referendum ballot contain a multiple-choice question?

Wisconsin Statutes are silent regarding whether a referendum can be framed as a multiple-choice question, particularly with regard to advisory referendum elections. Wis. Stat. § 5.64(4) states that a referendum question “may not be worded in such a manner as to require a negative vote to approve a proposition or an affirmative vote to disapprove a proposition.”

While the state elections agency has not adopted formal guidance on this question, the previous State Elections Board did issue an informal advisory opinion concluding that an advisory referendum question could comply with this statutory requirement by properly framing a multiple-choice question. The opinion concluded that the key is to ensure that all voters are provided the opportunity to vote upon all questions by carefully drafting the question and the options listed. The possible responses should be distinct and cover all options in order to provide effective and accurate feedback to policymakers. It is often a best practice to include a catch-all response such as “None of the above” to ensure that the positions of all voters are accurately captured by the results.

Because advisory referendum questions are not specifically addressed in the Statutes, and because their results are non-binding, the opinion of WEC staff is that local governing bodies are afforded some latitude in framing the question depending upon the specifics of the issue and the public feedback which is sought. Municipal clerks may wish to consult with their voting equipment vendors to ensure that the structure and length of the referendum question can be accommodated by the particular equipment and programming that is used.

Referendum questions typically should not be structured as multi-part questions that, for instance, only permit voters to answer a second question if they have voted yes to the first question.

Please note that, whether or not a referendum is posed as a multiple-choice question, there are practical considerations related to the length of the question and possible responses. Questions that exceed 5,000 characters and answers that exceed 100 characters will create administrative issues in both the WisVote system and on MyVote Wisconsin where the text fields for contests are limited. WEC staff recommends limiting the question field to no more than 5,000 characters (including any introductory language) and the response fields to no more than 100 characters. If questions that exceed these limits are being considered or are approved, please contact WEC staff to discuss wording of the question on the ballot and in WisVote.

8. What happens if a county board has ordered an advisory referendum election for a question that is the same or similar to one authorized by a municipal governing body? Must both questions be listed on the ballot?

This situation is becoming more common with the increase in organized efforts to seek advisory referendum elections in numerous jurisdictions in order to influence state or federal officials. It is also a situation that requires and benefits from communication between the clerks and elected officials of the counties and municipalities involved.

The short answer is that a county clerk must honor timely requests to include referendum questions from all jurisdictions. This may tend to create confusion for voters, however, if they are asked to vote twice on an identical question, once as a municipal referendum and once as a county referendum. It may also create confusion if there is a slight difference in the wording of the question even though the substance is identical, and voters must discern the significance of any variations in the questions.

Voter confusion may be reduced by effective communication between jurisdictions in advance of an order to conduct an advisory referendum. If a county board has authorized an advisory referendum on a question that also interests a municipal governing body, the municipality may wish to simply adopt the results of the county referendum in the municipality. In that case the municipal governing body should vote to rescind its referendum election and clearly communicate to the county clerk and to the public that the municipality will not conduct its own referendum election. If both the county and the municipality wish to conduct their own advisory referendum, some thought should be given to whether the question can and should be posed in an identical manner.

If you have any questions regarding this guidance or believe other topics should be included in this FAQ document, please contact the WEC Help Desk at 608-261-2028 or elections@wi.gov.