



TO: Government Performance and Finance Committee
Deputy Mayor John Hines, Chair

FROM: Chris Bacha, City Attorney *CDB*

SUBJECT: Referendum – Signature Gathering Time Period - Extension

DATE: December 17, 2024

INTRODUCTION

Section 2.20 of the Tacoma City Charter establishes the process and authority for voters to submit a referendum petition to the City Council. The 2023 Charter Review Committee’s proposed amendment No. 3 would have extended the time-period under this section of the Charter for gathering referendum petition signatures from **30** days to **90** days. The proposed amendment was considered by the City Council at its July 9th City Council meeting and referred to the Government Performance and Finance Committee for further discussion.

BACKGROUND

The voter’s power to submit an initiative or referendum petition to the City Council does not derive from the state constitution, rather it derives from state law and the City Charter.¹

The state legislature has authorized charter cities, like Tacoma, to provide for direct legislation by the people through the initiative and referendum petition process, but only upon any matter within the scope of the powers, functions or duties of the city.² The statute from which the initiative and referendum authority is derived provides in pertinent part as follows:

¹ City of Longview v Wallin, 174 Wn. App 763, 790 (2013); citing, City of Port Angeles v Our Water-Our choice, 1 Wn. 2d 1, 8 (2010) (holding that the constitutional power of initiative under Amendment 7 to the Washington Constitution does not apply to municipal governments.)

² RCW 35.22.200; see also, Port of Tacoma v Save Tacoma Water, 4 Wn. App. 2d 562, 570 (2018), and Ballasiotes v Gardner, 97 Wn. 2d 191, 195-196 (1982).

The legislative powers of a charter city shall be vested in a mayor and a city council, to consist of such number of members and to have such powers as may be provided for in its charter. *The charter may provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city. . . .* (emphasis added).

RCW 35.22.200. This provision vests legislative power in the mayor and city council. With respect to the power of initiative and referendum, it grants direct legislative authority to the people as may be provided in a City Charter.

Tacoma voters exercised the statutory authority to implement the power of initiative and referendum through enactment of Sections 2.18 – 2.24, 5.1, 8.1 and 8.7 of the City Charter. These provisions of the City Charter govern the initiative and referendum process unless they conflict with state law.³

DISCUSSION

An "initiative" allows voters to directly enact new legislation, while a "referendum" allows voters to overturn legislation enacted by the jurisdiction's legislative body, i.e., the City Council. The referendum powers of Tacoma voters are embodied at Section 2.20 of the Tacoma City Charter.

Section 2.20 of the City Charter allows voters to submit a referendum petition upon any ordinances passed by the City Council except ordinances that, (1) are passed as emergency measures, (2) relate to local improvements and assessment, (3) adopt budgets, (4) levy taxes, and (5) make appropriations. The Charter also prohibits submission of a referendum when doing so would conflict with state law.⁴

A referendum petition must be filed no later than 10 calendar days after the City Council has approved the ordinance that is the subject of the referendum. The Charter does not provide any exceptions to this requirement which means that the petition must be timely filed to be processed for signature gathering. However, voters that miss the ten-day deadline can still file an initiative petition pursuant to Section 2.19 of the City Charter to amend most ordinances passed by the City Council.

³ Washam v Sonntag, 74 Wn. App 504, 509 (1994); see generally, Dahl v Braman, 71 Wn. 2d 720, 725 (1967)

⁴ For further discussion of the limitations of referendum authority, see Section B, Memo to City Manager date May 14, 2024, relating to Charter Review Committee's referendum proposal.

Once a referendum petition is filed, the effective date of the ordinance will be suspended as long as the petitioner complies with the petition submittal requirements set forth in the charter. If the petition is placed on the ballot, then the ordinance that is the subject of the referendum will be suspended until the election is certified.

The charter requires review of the petition by the City Attorney before signatures are gathered to determine if the petition is in proper form and style and to prepare a ballot title. This review must take place within ten working days of receipt of the petition by the City Attorney. If the City Attorney determines that the petition meets the form and style requirements, it will be forwarded with the ballot title to the City Clerk who will assign a referendum number and provide notice to the petitioner that the ballot title becomes final and signature gathering may commence in ten working days if there is no judicial review. If the City Attorney determines that the petition does not meet the form and style requirements, then it will be returned to the petitioner with the reasons for rejection.⁵

If the ballot is approved by the City Attorney, anyone dissatisfied with the ballot title may seek judicial review within ten working days following notification to the petitioner. If a timely challenge is made, then the ordinance will remain suspended during the review by the court. Once the court has made a ruling on the ballot title, that ruling will be final and the petitioners can begin gathering signatures. If no-one seeks judicial review, the gathering of signatures begins ten days following receipt of the ballot title by the petitioner.

The charter currently allows petitioners a maximum of 30 days to collect signatures from registered voters. To be valid the signatures must belong to registered voters and represent an amount equal to ten percent of the votes cast in the last preceding election for the office of Mayor.

If the County Auditor determines that sufficient valid signatures are gathered, then the City Council must immediately reconsider the ordinance. If the council does not repeal the ordinance, then the City Council must submit the referendum proposal for a vote at the next municipal or general election that is not within 90 days of the date of validation of signatures. This means that if the date the County Auditor validates the petition signatures is within 90 days of the next general or municipal election, the petition cannot be placed on the ballot until the following year.

⁵ The charter does not indicate whether a petitioner can remedy the error. The opinion of this office is that, at best the petitioner may be able to remedy the error if that can be done within the remaining time-period, if any, for the City Attorney to review the ballot for form and style.

CHARTER REVIEW COMMITTEE RECOMMENDATION

The Charter Review Committee recommended that the 30-day signature gathering period be extended to 90 days. The Committee's recommendation at page 13 included the following statements supporting and opposing the proposed amendment:

Rationale for Amendment: In a vibrant democracy, citizen participation is the cornerstone of effective governance. Extending the timeframe for petitioners to gather signatures for a referendum from 30 to 90 days aligns with this fundamental principle. A 30-day window can be unduly restrictive, especially for grassroots movements and issues that require deeper community engagement. Providing petitioners with a 90-day period empowers diverse voices and ensures adequate time for meaningful dialogue, education, and outreach. A 90-day period mirrors the referendum signature timeframe allowed at the state level. This amendment fosters inclusivity, greater representation of diverse viewpoints, and an enhanced democratic process. It also acknowledges and corrects the sometimes insurmountable challenges petitioners now face, such as logistical and time constraints, given the need to reach a wide array of constituents in order to meet the 10% valid-signature threshold. Ultimately, this extension promotes a more democratic environment where residents can effectively exercise their right to participate in the referendum process.

Dissenting Position: The current referendum process that allows Tacoma citizens the opportunity to refer Council adopted ordinances to the citizens of Tacoma for an up or down vote has worked well since it was placed in the charter. The current requirement of 30 days to gather referendum signatures establishes a reasonable and properly timed process. This is especially true since the Council typically takes many months from introduction to final passage of an ordinance where many hearings and much debate and compromise occurs before final passage. Given this significant amount of Council consideration time, coupled with the existing ballot title drafting process and petitioners' likely involvement, the current charter language gives petitioners sufficient time to prepare for and gather the necessary referendum signatures within 30 days from the date the ballot title is approved. This proposed amendment is a solution looking for a problem to solve where none exists.

IMPACT OF PROPOSED CHANGE.

The most direct impact of the proposed change is to increase the time-period that an ordinance enacted by the Council will be suspended in the event a referendum petition is timely filed, regardless of whether signatures are gathered. Additionally, lengthening the signature gathering period increases the likelihood of a much longer delay in the effective date of the proposed ordinance.

The Charter limits referendum elections to the municipal and general elections and makes no reference to special elections. Accordingly, the proposed referendum ballot must be filed with the County Auditor in time to qualify for the November general election. The time-period for submittal of ballot propositions to the County Auditor is typically early August of the year of the November election. Before submittal, the ballot signatures must be verified by the County Auditor and the City Council must take action to send the initiative to the County Auditor to place it on the ballot. This process could take between three and five weeks. This means that any ordinance submitted beyond the first or second week in April and that is subject to a referendum petition, would not be on the ballot until November of the following year. In other words, the proposed amendment would increase the likelihood of a referendum having the effect of suspending the effective date of the subject ordinance for as much as 18 months.