

CHICAGO BOARD OF ELECTION COMMISSIONERS

GUIDELINES FOR LOCAL OPTION REFERENDA

FEBRUARY 28, 2023 MUNICIPAL GENERAL ELECTION

*These Guidelines are intended to provide basic information regarding the preparation and submission of local option referenda under the Illinois Liquor Control Act and the Illinois Election Code. These Guidelines do not constitute a legal opinion or legal advice. The information contained in this publication is drawn from provisions of federal and state law. To the extent that this publication conflicts with the requirements of federal or state law, those laws prevail over this publication. **You are strongly encouraged to seek competent legal advice concerning your rights and obligations and you should not rely solely on the contents of this publication.** For assistance finding qualified legal counsel, contact the Chicago Bar Association's Lawyer Referral Service at 312-554-2001 (hearing impaired: 312-554-2055) or online at www.lrs.chicagobar.org.*

All citations to "ILCS" are to the Illinois Compiled Statutes, which may be found at the Cook County Law Library, 29th Floor of the Richard J. Daley Center, Chicago, Illinois, and on the Illinois General Assembly website at <https://www.ilga.gov/legislation/ilcs/ilcs.asp>

*If you have any questions or if you wish to obtain additional information, you may contact the Board of Election Commissioners for the City of Chicago, 69 West Washington, Suite 800, Chicago, Illinois, (312-269-7900) or on the Web at www.chicagoelections.gov. **Please note that this publication may be revised. Please periodically consult the Board's Web site for the most current information.***

I. Introduction

Enacted after the repeal of Prohibition, the Illinois Liquor Control Act of 1934 (or the "Act") (235 ILCS 5/9-1 *et seq.*) gives voters in Chicago an opportunity to vote on the question of whether to prohibit the retail sale of liquor in their precinct. Such a question, generally referred to as a "local option referendum," can be placed on the ballot at an election if 25% of the registered voters in a precinct sign and timely file with the City Clerk a petition requesting that the measure be submitted to the voters of the precinct at an election. 235 ILCS 5/9-2. If approved by a majority of precinct voters voting on the question, the sale of alcoholic liquor is banned and that precinct then becomes "dry." The process can also work in reverse in that voters in a "dry" precinct may vote the precinct "wet," i.e., discontinue the prohibition against the sale of liquor. 235 ILCS 5/9-10.

Over the years, the local option law has survived constitutional attacks by affected licensees and the liquor industry in state and federal courts. Voters have successfully used the local option law to shut down troublesome liquor establishments in their precincts.

At various times, the Illinois legislature has enacted provisions that would also allow voters to ban the sale of liquor at a particular licensed establishment or at a particular address within the precinct. However, the courts have held that these provisions are unconstitutional.¹ Therefore, at present the local option referendum provisions of the Liquor Control Act may operate only to ban or limit the sale of alcoholic liquor in an entire precinct and, if approved by the voters, *all* licensed establishments in the precinct will be affected. Please note, however, that certain sport stadiums (e.g., Guaranteed Rate Field, Wrigley Field and the United Center) are exempt from the local option law and cannot be voted dry. 235 ILCS 5/9-2a.

¹ See, e.g., *87 South Rothschild Liquor Mart v. Kozubowski*, 752 F.Supp. 839 (N.D. Ill. 1990); *Club Misty, Inc., v. Laski*, 208 F.3d 615 (7th Cir. 2000), cert. den. 121 S.Ct. 565, 531 U.S. 1011, 148 L.Ed. 2d 484.

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When used in the Liquor Control Act, the term “precinct” means that part of the City of Chicago that was used as a voting or election precinct at the last general election. 235 ILCS 5/9-1. This means, for example, that for any local option referendum to be submitted to voters at the February 28, 2023 Municipal General Election, the precinct to be voted upon will be the precinct as it existed *as of the last general election on November 8, 2022*.

II. PETITION REQUIREMENTS

To get a local option referendum on the ballot, registered voters in the precinct must sign and timely file a petition with the City Clerk of the City of Chicago requesting the submission to the voters of that precinct at an election the question of whether to prohibit or limit (or discontinue the prohibition of) the sale of alcoholic liquor in that precinct. Article 9 of the Liquor Control Act sets forth the requirements for such a petition, the form of the proposition and other procedures for local option referenda. *See* 235 ILCS 5/9-1 *et seq.* In addition, a petition must conform to the requirements of the general election law found in Article 28 of the Illinois Election Code. *See* 10 ILCS 5/28-1 *et seq.*

Petition Signatures

For the prohibition (or discontinuance of the prohibition) of the sale of liquor in the entire precinct, the petition must contain the signatures of not less than 25% of the registered voters of the precinct. *See* 235 ILCS 5/9-2; 5/9-10. In calculating the *minimum* number of signatures needed on a petition, first determine the total number of registered voters in the precinct as of the last general election for county and statewide officers in November of even-numbered years (November 2022).² The number of registered voters in the precinct for that election will be shown by the “poll sheet” or “precinct register” for that precinct (and supplements to the poll sheet/precinct register, if any) published for that election by the Chicago Board of Election Commissioners (do not rely upon so-called “walk sheets”). Then, multiply the total number of registered voters in the precinct by 25% (round fractions of a number *up* to the next highest whole number).

For petitions seeking to place a local option referendum on the ballot for the February 28, 2023 Municipal General Election, the minimum number of signatures needed on the petition would be equal to 25% of the number of registered voters in the precinct as determined by the poll sheet and supplements to the poll sheet for that precinct for the November 8, 2022 General Election.

There is no maximum limit on the number of signatures that can be placed on a petition.

To be eligible to sign a petition, a person must be registered to vote in that precinct at the time he or she signed the petition. A petition sheet must be signed in the presence of the person who is circulating that sheet.

Petition Circulation

1. The petition cannot be circulated more than 4 months before the date on which the petition must be filed. For example, if the petition is to be filed on the last day permitted by law for filing such petitions (November 16, 2022 for Section 9-2 petitions), then the first day the petition can be circulated is July 16, 2022. The circulator’s statement at the bottom of each petition sheet shall include an attestation that (1) none of the signatures on the petition sheet were signed more than 4 months before the filing of the petition, or (2) the dates on which the petitioners signed the petition. Failure to include this information will render the petition invalid.³

² 95th *Food & Liquor Inc. v. Wish, et al.*, 1994-CO-0291 (Cook Cty. Cir. Ct., 10/27/1994).

³ *Mabwa v. Mendoza*, 2014 IL App (1st) 142771, ¶ 47.

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2. The petition must be circulated by a person who is at least 18 years of age and is a citizen of the United States. Petition circulators are not required to be registered voters nor are they required to be residents of the precinct.

3. The circulator must certify that all the signatures on the petition sheet were signed in his or her presence and are genuine. Do not sign as the circulator of a petition sheet if you did not, in fact, circulate that sheet.

4. The circulator must, in the presence of a notary public or some officer authorized to administer oaths in the State, sign the affidavit at the bottom of the petition sheet.⁴

Petition Contents

1. The petition must contain in plain and non-legal language a description of the precinct in which the proposition is to be submitted at the election. Such description shall refer to streets, street addresses, natural or artificial landmarks, or any other method which would enable a voter signing the petition to be informed of the geographic boundaries of the precinct as it existed as of the last general election (November 8, 2022).

2. The petition shall also contain a list of the names and addresses of all liquor licensees in the precinct.

Petition Filing

1. A petition seeking to submit to precinct voters the question whether to prohibit the sale of alcoholic liquor **pursuant to Section 9-2** of the Liquor Control Act must be filed with the City Clerk of the City of Chicago not less than 104 days before the election at which the referendum is to be held. For the February 28, 2023 Municipal General Election, the deadline for filing such a petition is November 16, 2022.

A petition seeking to submit to precinct voters the question whether to discontinue an existing prohibition against the sale of alcoholic liquor **pursuant to Section 9-10** of the Liquor Control Act must be filed with the City Clerk of the City of Chicago not less than 90 days before the election. For the February 28, 2023 Municipal General Election, the deadline for filing such a petition is November 30, 2022.

2. A voter may revoke his or her signature on a petition sheet by filing with the City Clerk a written revocation within 20 days after the date the petition was filed. Such revocations must be accompanied by an affidavit from the person who circulated the revocation.⁵

3. The City Clerk shall then certify any *valid* local option proposition to the Chicago Board of Election Commissioners, who shall submit the proposition at an election to the voters of the precinct.⁶

If more than one valid petition for local option referendum in the same precinct is filed with the City Clerk, the petition filed first will be given preference. However, the Clerk will provisionally accept any other set of petitions setting forth the same, or substantially the same, proposition. If the first set of petitions is found to be valid and in proper form, it will be accepted and all provisionally accepted sets of petitions will be rejected by the Clerk. If the first set of petitions is found not to be in proper form or is invalid, the Clerk will reject the first set of petitions, accept the first provisionally accepted set of petitions that is valid and in proper form, and reject all other provisionally accepted sets of petitions.

Petition Objections

1. Petition opponents – either affected liquor licensee(s) or any 5 registered voters in the precinct – may contest the validity of the petition by filing a complaint in the circuit court.

2. The complaint must be filed not less than 72 days before the election at which the referendum is to be held.

⁴ See *Mashni Corp. ex rel. Mashni v. Laski*, 351 Ill.App.3d 727, 814 N.E.2d 879 (1st Dist. 2004).

⁵ See *Mashni Corp. ex rel. Mashni v. Laski*, 351 Ill.App.3d 727, 814 N.E.2d 879 (1st Dist. 2004).

⁶ The submission of the issue to the electorate is mandatory only “when the petition has been filed in proper form with the clerk.” *Mabwa v. Mendoza*, 2014 IL App (1st) 142771.

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3. At the time of filing a complaint to contest the validity of a local option petition, the complainant(s) must also file a bond for costs.
4. Any legal voter in the precinct, including petition proponents, may appear in court and defend the petition.

III. FORM OF BALLOT QUESTION

The forms of the various questions that may be submitted at a local option referendum election pursuant to Section 9-2 of the Liquor Control Act are:

- “Shall the sale at retail of alcoholic liquor be prohibited in this _____ Precinct of the _____ Ward of the City of Chicago (as such precinct existed as of the last general election)?”
- “Shall the sale at retail of alcoholic liquor other than beer containing not more than 4% of alcohol by weight be prohibited in this _____ Precinct of the _____ Ward of the City of Chicago (as such precinct existed as of the last general election)?”
- “Shall the sale at retail of alcoholic liquor containing more than 4% of alcohol by weight except in the original package and not for consumption on the premises be prohibited in this _____ Precinct of the _____ Ward of the City of Chicago (as such precinct existed as of the last general election)?”

Also, the question whether to continue any of the above-referenced prohibitions then existing in any precinct may be submitted to the voters pursuant to Section 9-10 of the Liquor Control Act in one of the following alternate forms:

- “Shall the prohibition of the sale at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight) (or alcoholic liquor containing more than 4% of alcohol by weight except in the original package and not for consumption on the premises) be continued in the _____ Precinct of the _____ Ward of the City of Chicago (as such precinct existed as of the last general election)?”

IV. SUBMISSION TO VOTERS

1. A local option referendum question may be submitted to the voters of a precinct only at an election fixed by the general election law for the election of county officers or city officers. 235 ILCS 5/9-1. Thus, local option referenda may not be submitted to voters at a primary election.
2. If the boundaries of the precinct in which the dry/wet question was adopted are changed, the dry/wet status of the territory affected does not change unless the voters of such territory change the status as to any annexed or disconnected areas pursuant to Sections 9-2, 9-9 or 9-10 of the Liquor Control Act. 235 ILCS 5/9-9.

V. REFERENDUM RESULTS

If a majority of voters in the precinct approve the question whether to prohibit the sale of alcoholic liquor by voting “YES”, the sale at retail of alcoholic liquor shall be prohibited as provided in the proposition. 235 ILCS 5/9-2.

If a majority of voters in a precinct voting upon the question whether to continue the prohibition against the sale of alcoholic liquor in precincts that are already “dry” vote “NO”, such prohibition shall cease. 235 ILCS 5/9-10.

A vote on a proposition under the Liquor Control Act shall become operative on the 30th day after the day of the election unless the validity or the results of the election are timely and properly contested. 235 ILCS 5/9-3.

A vote upon any proposition under the provisions of the Liquor Control Act shall be a bar to the re-submission of such proposition in the same precinct for 47 months thereafter. 235 ILCS 5/9-11.

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