CHICAGO BOARD OF ELECTION COMMISSIONERS

2020 GUIDELINES FOR ADVISORY REFERENDA

Revised Oct. 9, 2019: Deadline for adoption of referendum ordinance or resolution for the 2020 general election corrected to Aug. 17, 2020.

These Guidelines are intended to provide basic information regarding the preparation and submission of advisory referenda under 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 <u>strongly</u> encouraged to seek competent legal advice concerning your rights and obligations as a referendum proponent and you should not rely solely on the contents of this publication. If you do not have an attorney and need assistance in finding one, the Chicago Bar Association has a Lawyer Referral Service that is available at (312) 554-2001 (hearing impaired: (312) 554-2055) and at the following website: <u>www.lrs.chicagobar.org</u>.

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, or on the Illinois General Assembly website at www.ilga.gov.

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.***

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The initiation and submission of all public questions to be voted upon by electors are subject to the provisions of Article 28 of The Election Code (10 ILCS 5/28-1 et. seq.). Advisory questions of public policy shall be submitted to a referendum pursuant to Section 28-5 of the Illinois Election Code or pursuant to a statute that provides for such a question.

These Guidelines address *only* procedures for initiating and submitting *advisory* questions of public policy within the City of Chicago. These Guidelines do <u>not</u> apply to a "local option" petition filed pursuant to Article IX of the Liquor Control Act of 1934 (235 ILCS 5/9-1 *et seq.*) or to any other binding referendum.

Questions of public policy that have any legal and binding effect are to be submitted to referendum only as authorized by the statute that provides for such a question or by the Illinois Constitution. Those statutes or constitutional provisions should be consulted for procedures for initiating and submitting such binding referenda.

I.   *Purpose and Effect*

A.   The purpose of an advisory referendum is to solicit the opinion of voters on a question of public policy (e.g. "Shall smoking be banned in all public buildings in the City of Chicago?" YES/NO)

B.   No legally binding effects result from the approval or rejection of an advisory question.

II. *Initiation and Submission*

  A. An advisory referendum may be initiated as follows:

    1. By petition (10 ILCS 5/28-6)

    2. By ordinance or resolution of the City Council (10 ILCS 5/28-6(b); 65 ILCS 5/3.1-40-60)

  B. An advisory question of public policy may be submitted to the voters of the *entire* City of Chicago (10 ILCS 5/28-6(a); 65 ILCS 5/3.1-40-60), or to the voters of a contiguous territory *less than* the City of Chicago (either a single precinct or multiple contiguous precincts, including all precincts in a ward) (10 ILCS 5/28-6(b)).

III. *Petition Requirements*

  A. Contents (10 ILCS 5/28-3)

    1. Petitions for submission of public questions must consist of sheets of uniform size, consecutively numbered and securely bound.

    2. Each petition sheet must contain, above the space for signatures, an appropriate heading that is the same for each sheet and that:

      a. Sets forth the text of the question to be submitted to the voters (only one referendum question per petition[1]).

      b. Specifies whether the question is to be submitted to:

        i. the voters of the city at large; or
        ii. the voters of a precinct or a group of precincts, in which case the petition must include
- the precincts included in the territory concerning which the public question is to be submitted; and
- a common description of the territory's geographic boundaries in plain and non-legal language, including a reference to streets, natural or artificial landmarks, addresses or any other method which would enable a voter signing the petition to be informed of the territory concerning which the question is to be submitted.

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[1] 10 ILCS 5/28-3. See also *Czaja, et al., v. Petition for the "Take Charge Chicago" Referenda,* 18-EB-QPP-03 (Chicago Electoral Board 2018), affirmed *Pat Quinn, et al., v. Board of Election Commissioners for the City of Chicago, et al.,* 2018-COEL-000028 (Cir. Ct. Cook Co., Judge Hannon, Jan. 29, 2019), affirmed 2019 IL App (1st) 190189 (1st Dist. App. Ct., June 21, 2019), leave to appeal denied No. 125106 (Ill. Sup. Ct., Sept. 25, 2019).

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        c.   Specifies the election at which the question is to be submitted (may not specify submission to an election more than one year, or 15 months in the case of a backdoor referendum[2], after the date on which it is filed).

B.   Signatures

1.   For a citywide referendum, petition must be signed by a number of registered voters who reside in the city of Chicago equal to at least 8% of the total votes cast for Governor in the city of Chicago in the preceding gubernatorial election (November 6, 2018 General Election). (10 ILCS 5/28-6(a))

2.   For a referendum in a city precinct, petition must be signed by a number of registered voters who reside in the precinct equal to at least 8% of the total votes cast for Governor in the precinct in the preceding gubernatorial election (November 6, 2018 General Election). (10 ILCS 5/28-6(b))

3.   For a referendum in a combination of precincts, petition must be signed by a number of registered voters residing in any part of a precinct all or part of which includes all or part of the territory where the question is to be submitted equal to at least 8% of the total votes cast for Governor in the territory in the preceding gubernatorial election (November 6, 2018 General Election) (10 ILCS 5/28-6(b)).

      NOTE: It is not clear in Section 28-6 of the Election Code whether the 8% requirement applies to the territory for all of the precincts as a whole or to each of the precincts individually. Therefore, it may be prudent to obtain signatures equal to or exceeding the 8% requirement in each precinct or part of the precinct.

4.   Petition signers must be registered voters of the City if a citywide referendum, or of the precinct or precincts in which the referendum is to be submitted if less than the City. (10 ILCS 5/28-3) A registered voter means a person who is registered to vote at the address shown opposite his or her signature on the petition or was registered to vote at such address when he or she signed the petition. (10 ILCS 5/3-1.2)

5.   Signer of petition must *sign* (do not print) only his or her *own* name. A person may not sign for any other person, including a spouse, children, etc. Whoever forges any name of a signer upon any petition is guilty of forgery and will, on conviction, be punished accordingly. (10 ILCS 5/28-3)

6.   Opposite the signature of each signer of the petition must be written or printed the signer's residence address, including the street address, city, county and state, except that the city, county or state of residence may be printed on the petition forms. Standard abbreviations may be used in writing the residence address, including street number. (10 ILCS 5/28-3)

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[2] "Backdoor referendum" means the submission of a public question to the voters of a governmental unit, initiated by a petition of voters, residents or property owners of such governmental unit, to determine whether an action by the governing body of such governmental unit shall be effective, adopted or rejected. 30 ILCS 350/3(c).

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C.   Circulation (10 ILCS 5/28-3)

1.   A petition circulator must be at least 18 years of age on the date of the immediately following general or consolidated election and a citizen of the United States. (10 ILCS 5/3-6)

2.   At the bottom of each sheet of a petition there must be a statement, signed by the circulator of that petition sheet, stating his or her street address and city, county and state, certifying that the signatures on that sheet were signed in his or her presence and are genuine, and that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petition registered voters of the city, or of the precinct or precincts in which the question is to be submitted, as the case may be, and that their respective residences are correctly stated on the petition.

D.   Notarization

The circulator of each petition sheet must personally appear before a notary public, sign the statement on the bottom of the petition sheet and have the signed affidavit notarized. (10 ILCS 5/28-3)

E.   Amendment of Petition Prohibited

Except as otherwise may be provided in another statute authorizing the public question, a petition, when presented or filed, cannot be withdrawn, altered, or added to, and no signature can be revoked except by a revocation in writing presented or filed with the Board of Election Commissioners before the presentment or filing of the petition. (10 ILCS 5/28-3)

IV.   *Deadlines; Certification Requirements*

A.   A petition for an advisory referendum must be filed and received not less than 92 days before a regular election. (10 ILCS 5/28-2(a))

For the March 17, 2020 general primary, the deadline for filing a petition is Monday, December 16, 2019.

For the November 3, 2020 general election, the deadline for filing a petition is Monday, August 3, 2020.

The petition shall be filed with the Chicago Board of Election Commissioners. (10 ILCS 28-6(b))

B.   An ordinance or resolution initiating an advisory referendum must be adopted by the Chicago City Council not less than 79 days before a regular election. (10 ILCS 28-2(c))

For the March 17, 2020 general primary, the deadline for adoption is Monday, December 30, 2019 (Sunday, December 29, 2019 is the 79th day before the primary – deadline moved to next business day per 10 ILCS 5/1-6).

For the November 3, 2020 general election, the deadline for adoption is Monday, August 17, 2020 (Sunday, August 16, 2020 is the 79th day before the election – deadline moved to next business day per 10 ILCS 5/1-6).

Not less than 68 days before a regular election, the City Clerk shall certify to the Chicago Board of Election Commissioners any public question timely initiated by action of the Chicago City Council. (10 ILCS 5/28-5)

For the March 17, 2020 general primary, the deadline for the City Clerk's certification is Thursday, January 9, 2020.

For the November 3, 2020 general election, the deadline for the City Clerk's certification is Thursday, August 27, 2020.

The City Clerk shall certify to the Chicago Board of Election Commissioners any public questions to be submitted to the voters of or within the City of Chicago that were initiated by action of the Chicago City Council. (10 ILCS 5/28-5) The certification shall include:

- i. the form of the public question to be placed on the ballot
- ii. the date on which the public question was initiated by the adoption of a resolution or ordinance of the Chicago City Council
- iii. a certified copy of the ordinance or resolution requiring submission of the public question
- iv. in the case of a question of public policy concerning a contiguous territory included entirely within but less than the entire city of Chicago, the precinct or precincts included in the territory concerning which the public question is to be submitted
- v. a common description of such territory, in plain and nonlegal language as set forth in the ordinance or resolution initiating the public question
- vi. specify the election at which the question is to be submitted (may not specify submission to an election more than one year, or 15 months in the case of a backdoor referendum, after the date on which it is adopted).

> If the resolution or ordinance did not specify a particular election for its submission, the City Clerk shall certify or recertify the question for submission on the ballot at the next regular election no more than one year, or 15 months in the case of a backdoor referendum, subsequent to the adoption of the initiating resolution or ordinance.

V.   *Number of Propositions Limited: "Rule of 3"*

A.   Not more than 3 questions of public policy – whether initiated by petition of voters or by city ordinance or resolution – may be submitted to citywide referendum at the same election. (10 ILCS 5/28-1)

1.   Rule applies to both advisory and legally binding questions.

2.   Rule does not apply to statewide or countywide referenda that may appear on the ballot in the city.

3.   Rule does not apply to a referendum in a ward, precinct or a combination of precincts.

B.   If more than 3 questions are initiated by petition of voters or by City Council ordinance or resolution for submission to *citywide* referendum at the next regular election, the Chicago Board of Election Commissioners may certify only the first 3 validly initiated questions for that election. (10 ILCS 5/28-1)

VI. *Objections; Refusal to Certify*

A.   Objections to a petition for advisory referendum for a proposition to appear on the ballot only within the city of Chicago or a part thereof may be filed with and must be received by the Chicago Board of Election Commissioners not later than five (5) business days after the last day for filing a petition for a public question. (10 ILCS 5/10-8) The provisions of Sections 10-8 through 10-10.1 of the Election Code shall apply to and govern objections to petitions submitted by voters. (10 ILCS 5/28-4)

> For the March 17, 2020 general primary, the deadline for filing objections to advisory referenda petitions is Monday, December 23, 2019.

> For the November 3, 2020 general election, the deadline for filing objections to advisory referenda petitions is Monday, August 10, 2020.

B.   Even in the absence of an objection, the Board has the authority under Section 10-8 of the Election Code to (i) determine whether a petition to submit a public question to a referendum is in apparent conformity with the provisions of the Code and (ii) refuse to certify to the ballot a public question initiated by a petition that is not in apparent conformity with the Code. If the Board determines that a petition to submit a public question is not in apparent conformity with the provisions of the Code, the person(s) filing the petition will be notified by mail addressed to such person(s) and given an opportunity to be heard.

VII. *Examples*

A.   Advisory referenda.

1.   City-wide (e.g.) "Shall the City of Chicago be a nuclear-free zone?"

2.   Combination of city precincts (e.g.) "Shall the City of Chicago shut down the Northwest Garbage Incinerator located . . . . . .?"

B.   Legally binding referenda.

1.   City-wide.

For adoption of one of two or more ward redistricting ordinances. (65 ILCS 20/21-41)

2.   Combination of city precincts.

a.   For adoption of home equity assurance program. (65 ILCS 95/4)
b.   For adoption of a neighborhood security patrol program. (65 ILCS 97/15)
c.   For creation of a community expanded mental health services program (405 ILCS 22/1)

3.   Single city precinct.

For prohibition of the sale of liquor. (235 ILCS 5/9-1 et seq.)

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