



## Direct Democracy in Wisconsin

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Direct democracy is a form of governance where citizens use powers normally associated with a representative legislative body, such as the Legislature or a city's common council. Forms of direct democracy include elector initiatives, which allow qualified electors to create and vote on specific laws, and referenda, which generally are binding or advisory questions that voters answer at the ballot box.

Wisconsin, unlike 24 other states, does not have a statewide initiative process.<sup>1</sup> Wisconsin law has never allowed state-level elector initiatives, but previously allowed county-level initiatives, and currently allows for certain elector initiatives at the municipal and school board level.<sup>2</sup> Referenda are allowed or required for certain issues at the state, county, and municipal level as well as in many types of local districts.<sup>3</sup>

### PETITION FOR ORDINANCE OR RESOLUTION

Wisconsin law allows city or village electors to petition their municipality for a specific ordinance or resolution. This initiative process involves the circulation of a petition by electors, the certification of the petition by the clerk, and either the passage of the ordinance or resolution by the common council or village board or the scheduling of a vote on the ordinance or resolution at the next election.<sup>4</sup>

To begin, proponents of the ordinance or resolution must create a petition pursuant to s. 8.40, Stats., and collect signatures totaling at least 15 percent of the votes cast for Governor in their municipality in the last gubernatorial election. Once proponents begin collecting signatures, they have 60 days to collect the required number and file the petition with the clerk. [s. 9.20 (1), (2), and (2m), Stats.]

Then, the clerk has 15 days to determine the sufficiency of the petition and to evaluate the form of the ordinance or resolution. The clerk's findings are included in a signed and dated certificate attached to the petition. Any defects are detailed and noticed to the petition's point of contact, who then has 10 days to make the petition sufficient or correct the form of the ordinance or resolution. [s. 9.20 (3), Stats.]

Once found sufficient and in the proper form, the clerk immediately forwards the petition and proposed ordinance or resolution to the common council or village board. Then, the common council or village board has 30 days to either pass the unaltered proposal or include it in the next appropriate election, subject to the below exceptions.<sup>5</sup> [s. 9.20 (4), Stats.] As interpreted by Wisconsin courts, the statutes do not require a common council or village board to act on a proposed measure in the following situations:

- The proposed measure involves executive or administrative, rather than legislative, matters;
- The proposed measure compels the repeal of an existing ordinance or resolution, or compels the passage of an ordinance which would be in clear conflict with existing ordinances or resolutions;
- The proposed measure seeks to exercise legislative powers not conferred on a municipality; or
- The proposed measure would modify statutorily prescribed directives that would bind a municipality if it were attempting to legislate in the same area.

[*Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2002 WI App 80, ¶ 7.]

If a common council or village board refuses to act, a person may bring an action for mandamus — a court order to the local body to act. [*Id.* ¶ 4.] The entire proposed measure is not required to be on the ballot, rather only a concise statement of its nature is needed. If a majority of electors vote in favor of adoption, then the proposed measure takes effect upon publication, which must occur within 10 days of the election. The adopted measure cannot be vetoed by the city's mayor and can only be repealed or amended within two years of adoption by a vote of the electors.<sup>6</sup> The common council or village board may schedule a vote to repeal or amend the measure at any election. [s. 9.20 (6) to (8), Stats.]

## CONVENING A SPECIAL TOWN MEETING

Wisconsin law allows town residents to convene a special town meeting by filing a written request with the town clerk. A special town meeting has the same powers of a town meeting detailed in s. 60.10, Stats. The request must be signed by electors totaling at least 10 percent of the votes cast in the town for Governor at the last gubernatorial election. The purpose of the special town meeting must be stated in the request for the meeting. The town meeting's actions are decided by a majority of the electors voting and any qualified elector of the town may vote at a town meeting. [ss. 60.12 (1) (b), (2), and 60.14, Stats.]

## PETITION FOR ITEM OF BUSINESS AT SCHOOL BOARD MEETING

Electors in a common or union high school district may initiate a vote on an appropriate special subject or item of business at the annual meeting or at a properly petitioned and noticed special meeting.<sup>7</sup> To initiate a vote at an annual meeting, electors must file a petition signed by 100 electors at least 60 days prior to the annual meeting with the school district clerk. Then, the clerk must prepare a proper ballot to permit voting on the issue at the annual meeting or reject subjects not appropriate for the annual meeting and notify the designated contact person on the elector petition. [s. 120.09, Stats.] To initiate a special meeting, either three percent of a school district's electors or 100 electors, whichever is fewer, must file a petition with the school district clerk. Then, the clerk must call a special meeting unless the petition includes a subject beyond the power of the special meeting, in which case the clerk must reject the subject and notify each elector who signed the petition. [s. 120.08 (2), Stats.]

## REFERENDA

Wisconsin law provides numerous referendum opportunities for electors to participate in governance. Generally, referenda must be properly filed, noticed, and scheduled.<sup>8</sup> [ss. 8.37, 8.55, and 13.175, Stats.]

Statewide referenda are required when the Legislature seeks to adopt a constitutional amendment, extend the right to vote, exceed the constitutional debt limit, or enact a law contingent on voter approval. The Legislature may also initiate a statewide advisory referenda. A county board may hold a countywide referenda for either advisory purposes or to ratify a contingent measure. [s. 59.52 (25), Stats.]

A common council or village board may submit a charter ordinance directly to electors for approval. [s. 66.0101 (7), Stats.] Additionally, city and village electors have a "citizens' veto" power that allows them to petition for and subsequently decide on a recently passed charter ordinance in a referendum. [s. 66.0101 (5), Stats.] Within 60 days after a charter ordinance's passage and publication, local electors may petition for a referendum with signatures of seven percent of votes cast for Governor in the last gubernatorial election. The petition and proceedings for its submission are governed by s. 9.20 (2) to (6), Stats. [s. 66.0101 (5), Stats.] The statutes also permit the "citizens' veto" when municipalities take specific actions generally related to subdivision boundaries and government finances and operation.<sup>9</sup>

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<sup>1</sup> Voters rejected a statewide elector initiative process in 1914 after the Legislature had passed a proposed constitutional amendment in the prior two sessions. Since then, although various legislators have proposed creating state-level initiative powers, no proposal has passed in successive legislative sessions. See an example proposal [here](#).

<sup>2</sup> County electors had the power to initiate general ordinances between 1911 and 1943. Wisconsin city electors gained the power to initiate general ordinances and resolutions in 1911 and charter ordinances in 1925. Village electors gained the power to initiate charter ordinances in 1925 and general ordinances in 1989. Town electors have had the power to call for a special town meeting and effect town business since at least 1849.

<sup>3</sup> General referenda power was granted to cities and villages in 1925 and to counties in 1980.

<sup>4</sup> The option to pass the petitioned measure without an elector vote adds an indirect aspect to Wisconsin's direct legislation law.

<sup>5</sup> Generally, the next election is appropriate if that election is more than 70 days after the council's or board's action on the petition or the expiration of the 30-day period, whichever first occurs. Otherwise, the vote will be taken at the next subsequent election. An earlier special election may be scheduled by a three-fourths majority vote of the council or board, but no more than one special election for direct legislation may be ordered in any six-month period. [s. 9.20 (4), Stats.]

<sup>6</sup> Wisconsin law does not provide village presidents, the village-equivalent of mayor, veto power.

<sup>7</sup> Special meetings generally have the powers listed at s. 120.10, Stats., for annual meetings. [s. 120.08 (2) (c), Stats.]

<sup>8</sup> See Legislative Reference Bureau, *Ballot Initiative and Referendum in Wisconsin*, Wisconsin Elections Project 1.1 (Feb. 2020) for more information.

<sup>9</sup> The time allowed to petition and the number of signatures needed vary depending on the specific action.