

Nov 16 2022 12:01 pm



CITIZEN'S GUIDE TO MUNICIPAL PETITIONS

Dear Voter,

This guide is intended to outline the procedure for a citizen of Fitchburg to place a matter before the City Council or on the ballot via referendum or initiative petition.

Both referendums and initiative petitions deal with "measures." Under the statutes, "measure" means an ordinance, resolution, order or vote passed by a city council, or a resolution, order or vote passed by a school committee, as the case may be. These instructions do not cover petitions involving school committee measures, but the process is similar. The City Clerk acts as the Registrar of Voters for Fitchburg, so wherever the law refers to the Registrar, this guide will simply reference the Clerk directly.

REFERENDUM

A Referendum Petition is the method for citizens to overturn any measure (except a revenue loan order) approved by the City Council and is described at G.L. c. 43, § 42.¹ Under the statute, the process is as follows:

1. A Referendum Petition signed by at least twelve percent (12%) of the registered voters of the City must be filed with the City Clerk within twenty (20) days after the final passage of the measure by City Council.
 - a. The Referendum must be addressed to the City Council, protesting against the measure or against any part of that measure taking effect.
 - b. The Referendum may consist of separate papers and need not be filed all at the same time, but all papers must be filed by the deadline and all papers must contain materially identical information, including the text of the petition, such that each signatory is signing a copy of the same paper.
 - c. Three persons signing the Referendum must be designated as its filers.
 - d. Each voter's signature must list the residence, including street and number, of the signer.

¹ Which is copied to § 42 of the Fitchburg City Charter with no material alterations.

- e. The designated filers must notify the City Clerk in writing, prior to the deadline, that the filing is complete, at which point the petition will be deemed filed.
2. The City Clerk must examine the Referendum within five (5) days after filing, and certify the following:
 - a. The number of registered voters who have signed the Referendum; and
 - b. The percentage of total registered voters who have signed the Referendum.
3. The City Clerk then sends the Referendum and Certificate to the City Council, sending a copy to one or more of the designated filers.
4. If the Certificate states the Referendum meets minimum requirements, any registered voter of the City then has forty-eight (48) hours to file a written objection with the City Council and City Clerk. Otherwise, the Referendum will be considered valid.
5. G.L. c. 55B § 7 sets out the process for judging such objections.
6. Once a valid, certified Referendum is filed, the protested measure will be suspended from taking effect and the City Council will immediately reconsider the measure or the part of the measure that the Referendum protested.
7. If the measure or part thereof is not completely rescinded by the City Council within twenty (20) days after certification, the City Clerk must place the Referendum on the ballot *either*:
 - a. At the next regular city election at least thirty (30) days after twenty-day deadline has passed; or
 - b. At a special election called by the City Council for this purpose, in its discretion.
8. If the Referendum is placed on the ballot the City Solicitor must prepare a fair, concise summary of the protested measure to appear on the ballot. The form of the ballot will be such that a “Yes” is a vote in favor of *keeping* the measure that the Referendum protests, and a “No” is a vote in favor of *rejecting* the measure as the Referendum requests.
9. If a majority of the votes cast at the election are cast in favor of the measure (and not the Referendum), the measure or the part thereof that was protested by the Referendum will no longer be suspended and will take effect as law. If there is not a majority in favor of the measure, then the Referendum will be successful and the measure will become null and void.

INITIATIVE

An Initiative Petition is the method for citizens to submit a measure to the City Council or to the voters for approval and is described in G.L. c. 43 §§ 37-41.² The process is similar to that for a Referendum:

1. An Initiative Petition signed by at least three (3) registered voters of the City must be filed with the City Clerk.
 - a. The Initiative may consist of separate papers and need not be filed all at the same time, but all papers must contain materially identical information, including the text of the petition, such that each signatory is signing a copy of the same paper.
 - b. Three persons signing the Initiative must be designated as its filers.
 - c. Each voter's signature must list the residence, including street and number, of the signer.
 - d. The designated filers must notify the City Clerk in writing that the filing is complete, at which point the petition will be deemed filed.
 - e. Before receiving such notice, the Clerk's office may, but is not required to, certify signatures on the papers already filed.
 - f. The City Clerk must examine the Petition within five (5) days after filing, and certify the following:
 - i. The number of registered voters who have signed the Petition; and
 - ii. The percentage of total registered voters who have signed the Petition.
 - g. The City Clerk then sends the Initiative and Certificate to the City Council, sending a copy to one or more of the designated filers.
 - h. If the Certificate states the Initiative meets minimum requirements, any registered voter of the City then has forty-eight (48) hours to file a written objection with the City Council and City Clerk. Otherwise, the Referendum will be considered valid.
 - i. G.L. c. 55B § 7 sets out the process for judging such objections.
2. If the Initiative is signed by at least three (3) registered voters, but fewer than eight percent (8%) of the registered voters of the City, it will appear on the City Council's agenda at the Council's earliest convenience, and may at that time be dealt with by the Council like any other agenda item.
3. If the Initiative is signed by at least eight percent (8%) of the registered voters of the City, the City Council must pass, reject, or fail to act upon the proposed measure within twenty (20) days of certification.
4. If the Council does not pass the measure, without alteration, within that span, the City Clerk must place the measure on the ballot.
 - a. If the Initiative was signed by at least eight percent (8%) but fewer than fifteen percent (15%) of the registered voters of the City, the Clerk will present it at the

² As reflected in the same-numbered sections of the Fitchburg City Charter.

next regularly scheduled municipal election that falls at least thirty (30) days after the **sooner** of:

- i. The twentieth (20th) day following certification of the Initiative.
- ii. The date on which the Council takes a final vote to reject the measure.
- b. If the Initiative was signed by at least fifteen³ percent (15%) of the registered voters of the City, the Clerk shall present it at **either**:
 - i. The next otherwise-scheduled election that falls no later than ninety (90) days from the date of qualification (as defined above in 4(a)).
 - ii. A special election set by the Clerk on any Tuesday not less than thirty (30) nor more than forty-five (45) days from the date of qualification.
5. If the voters approve the measure by majority vote **and** the number of votes in favor constitutes at least one-third of all registered voters of the City, the measure will become law just as if it had been passed by the Council and signed by the Mayor.

The City Council can also act on its own authority to place any measure on the ballot as a binding question. This requires only an ordinary motion of the Council, and otherwise has the same result as an Initiative Petition.

CHARTER AMENDMENTS

The City of Fitchburg duly adopted as its charter Plan B of St. 1915, c. 267, now G.L. c. 43, §§ 1-45, 56-63. Therefore, it was “adopted” pursuant to General Laws that permitted cities and towns to adopt a “plan of government” and not under the Home Rule Amendment to the Massachusetts Constitution. It therefore will not fall within the “charter amendment” provisions of the Home Rule Amendment (Article 89), Section 4, as codified by G.L. c. 43B § 10, including the “grandfather” provision of § 10(e). Therefore, the City would be required to follow the “adoption” provisions of Article 89 of the Articles of Amendment to the Massachusetts Constitution, Section 3, as codified by G.L. c. 43B §§ 2-9. Section 8 of the same Home Rule Amendment provides an alternative route for Charter Amendments by obtaining a Special Act of the Legislature.

Under Section 3 of the Home Rule Amendment, the procedure for adoption of a charter is as follows:

1. A petition for the adoption of a charter must be signed by at least fifteen (15%) percent of the number of legal voters residing in such city or town at the preceding state election. This petition must strictly observe the form prescribed in G.L. c. 43B, § 15(a), and otherwise is subject to the same rules as other petitions discussed above with regard to how it must be presented and signed.

³ Although § 38 of the City Charter specifies 20%, this section was amended to 15% by the amendment of M.G.L. c. 43 § 39 in 1972. St. 1972, c. 38.

2. Whenever such a petition is filed with the Clerk's Office, the Board of Registrars of Voters shall, within ten (10) days of its receipt, determine the sufficiency and validity of the signatures and certify the results to the City Council.⁴
3. Objections to the sufficiency and validity of the signatures on any such petition as certified by the Board of Registrars of Voters shall be made by filing such objection with the City Clerk in accordance with G.L. c. 55B § 7.⁵
4. Within thirty (30) days of receipt of certification that a petition contains sufficient valid signatures, the City Council must pass an order submitting the question of adopting a charter to the voters by ballot, as well as providing for the nomination and election of a charter commission.
5. The Charter Commission would consist of nine (9) voters of the city, who would be elected at large at the next city election next held at least sixty (60) days after the order of the City Council. Each voter may vote for up to nine (9) candidates.
6. The vote on whether to create a Charter Commission and the election of the Charter Commission members will be on the same ballot at the same election. If the vote to create a Commission is in the affirmative, then the nine candidates receiving the highest number of votes will become the Commissioners.
7. Within ten (10) months after the election of the members of the Charter Commission, the Commission must submit the proposed charter to the City Council, and the Council must pass an order to publish the charter and to submit it to the voters of the City at the next city election held at least two months after the Charter Commission has submitted its proposal.
8. If the charter is approved by a majority of the voters at that election, it will become the valid charter, superseding the existing charter.

Under Section 8 of the Home Rule Amendment, the procedure to petition the State Legislature for Special Legislation to amend the charter (sometimes called a "Home Rule Petition") is as follows:

1. A petition to the State Legislature can be initiated by either the citizens or the City Council.
 - a. Initiation by the citizens of the City follows the same procedure as any other Initiative Petition as discussed previously in this guide (pp. 2-4). Once submitted, it will either be accepted by the Council and the Mayor (becoming effectively identical to option (b) below), or will need to meet the requirements (as previously detailed) to be submitted to the voters on the ballot.

⁴ "As used in this section, the phrase 'board of registrars of voters' shall include any local authority of different designation which performs the duties of such registrars, and the phrase 'city council of the city or board of selectmen of the town' shall include local authorities of different designation performing the duties of such council or board." Articles of Amendment, Art. 89, Sec. 3.

⁵ G.L. c. 43B § 3.

- b. Initiation by the City Council would be by ordinary resolution, including the requirement of mayoral approval,⁶ requesting the State Legislature to approve a special act.
- 2. After obtaining this local approval then our State Representative or State Senator can file a bill with the State Legislature to make the requested change.
- 3. While not required, it is tradition,⁷ to have the Special Act subject to local approval by the voters of the City (meaning that if the requested change was not already approved by the voters via the ballot question process, the State might condition its approval on a citywide vote at the next election).

NONBINDING ADVISORY QUESTION

The nonbinding public opinion advisory question is described at G.L. c. 53 § 18A.⁸ As the name implies, this is a question on the ballot that essentially “polls” the voting public, but has no legal effect. This may be placed on the ballot at a regular election by vote of City Council no later than thirty-five (35) days prior to the regular election, with mayoral approval. Alternatively, citizens may act to place a question on the ballot by the following process:

- 1. A petition signed by ten (10) registered voters must be filed with the City Clerk.
- 2. The City Council may pass the petition, in which case the question will be placed on the ballot at the next regular election at least thirty-five (35) days⁹ after such vote.
- 3. If the City Council fails to pass the petition at least ninety (90) days before the next regular election, the question will be placed on the ballot if a petition requesting that action is signed by at least ten percent (10%) of the registered voters of the City and is filed with the City Clerk. This condition would also be satisfied if the initial petition already had at least 10% signatures.
 - a. The City Clerk has seven (7) days to certify the signatures.
 - b. If there are enough signatures, the City Clerk will then place the question on the ballot at the next regular election falling at least thirty-five (35) days after the date of certification.

⁶ The wording of Section 8 strongly implies that a “veto override” procedure is not possible in this instance.

⁷ See Secretary of State’s office publication Local Charters revised 2017.

⁸ Fitchburg has not accepted G.L. c. 53 § 18B, a new “local option” section passed in 2010.

⁹ This is the City Solicitor’s interpretation of G.L. c. 53 § 18A.

EXCEPTIONS

Finally, there are a few statutory exceptions that allow the Council to act on requests by citizens outside of the procedures discussed above. This is not a comprehensive list, but simply an attempt to give the most common examples:

- A petition for a change to the zoning ordinance may be submitted by a single individual who owns land that will be affected by the zoning change.¹⁰
- Certain petitions for permission to install utility infrastructure have their own procedures.¹¹
- Whenever the City Council is not acting as a *legislative* body, but rather as a *licensing* body or as a *permit granting authority*, such as a request for an automobile dealer's license or for a special permit to operate an "Adult Business", the petition may be submitted solely by the individual seeking such approval.

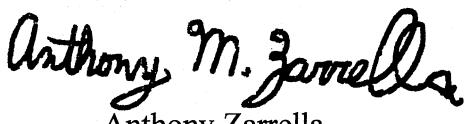
FINAL NOTES

Citizens are encouraged to consider the timing of their petitions and the impact of special election costs on the City, as it is quite costly and disruptive for the City to be required to hold a special election separate from those otherwise scheduled. However, any validly filed petition will be honored as required by law.

Any citizen wishing to submit an Initiative Petition is encouraged to seek legal counsel to review the language of the Initiative Petition **prior** to the gathering of signatures. If validly submitted, the Petition must be placed on the ballot (and if then passed, enacted) **exactly** as stated. Inaccuracies as to wording and substantive legal propriety can interfere with the intentions of the petitioners.

Good luck, and thank you for your interest in participating in the political process!

Sincerely,



Anthony Zarrella

City Council President



Joanna Bilotto

City Clerk



Vincent Pusateri, Esq.

City Solicitor

¹⁰ G.L. c. 40A § 5.

¹¹ G.L. c. 164 §§ 70-71, G.L. c. 166 §§ 70-71.

PETITION FAQ

Q. What is a “measure”?

A. A measure is any ordinance, resolution, order or vote passed by the City Council. It does not apply to portions of the City Charter under this statute.

Q. What is the date of final passage of a measure?

A. It is the date of the last action of the City Council on a measure, not the date that the Mayor signs the measure. The Mayor’s signature is an executive function, not a legislative function.

Q. Are zoning ordinances, special permits, and licenses “measures” subject to a Referendum Petition?

A. Zoning ordinances are measures. Special permits and licenses are not measures, and not subject to a Referendum Petition, even if approved by City Council.

Q. Is it possible to file a Referendum Petition on a measure defeated by City Council vote?

A. No, a measure defeated by City Council vote cannot be reactivated by Referendum Petition.

Q. Does “immediate reconsideration” mean that the City Council must hear the Referendum Petition at a specific time?

A. No, there is no specific time requirement for reconsideration. However, if the City Council fails to act within 20 days of the date of certification, the Referendum Petition must be submitted to the voters at an election.

Q. What if two measures are passed at the same election which contradict each other?

A. If two measures passed at the same election contain conflicting provisions, the measure receiving the greater number of votes shall take effect.