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January 21, 2010

William Bloor
Port Angeles City Attorney
Sent by email to wbloor@cityofpa.us
Also sent by fax to: 360-417-4529

Dear William,

I am writing to confirm our agreement that you will accept the briefs I need to send you on Friday my e-mail and by FTP download through Box.net.

The documents are lengthy and Box.net can handle a bigger document than an e-mail can.

Port Angeles is a great place, but it is a long drive from Seattle.

If this agreement is not acceptable to you, please call me at 425-771-1110 or on my cell phone, 206-226-4237. I will be driving to the Foster Pepper office and then Olympia. To hand deliver documents. The Supreme Court requires wet ink originals.

Thanks again.

Sincerely,

James Robert Deal

Copy to:

Roger Pearce/P. Steven DiJulio
Foster Pepper PLLC
Sent by email to pearr@foster.com
Also sent by fax to: 206-447-9700

No. 82225-5

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF PORT ANGELES, Respondent, v. OUR WATER-OUR CHOICE and PROTECT OUR WATERS Petitioners, v. WASHINGTON DENTAL SERVICE FOUNDATION, LLC, Respondent.	MOTION TO FILE AMICUS CURIAE BRIEF OF AUDREY ADAMS AND LINDA MARTIN

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A. IDENTITY AND INTEREST OF AMICI CURIAE

The Amicus Curiae is Audrey Adams of Renton, Washington, and Linda Martin of Snohomish, Washington. The interests of each amicus is here set forth in their own words:

STATEMENT OF AUDREY ADAMS OF RENTON, WASHINGTON:

This letter regards the case of the City of Port Angeles v. Our Water-Our Choice and Protect Our Waters, v. Washington Dental Service Foundation LLC, Case No. 82225-5. I am competent to testify, age 54, and make this affidavit under oath and penalty of perjury.

My son Kyle Adams, age 24, has autism and suffers from pain, severe headaches and other symptoms when exposed to chemicals in his food, in the air or in his water. He works as an office assistant at Highline Community College, but cannot do his job after chemical exposures. He must be protected from such exposures, but water is the hardest to avoid.

His sensitivity to chemicals is so great that he cannot drink fluoridated water and cannot shower in fluoridated water without suffering a severe headache that lasts for hours. Someone wearing perfume will cause his heart rate to skyrocket (demonstrated by accident in the doctor's office). A tiny bit of yellow dye #5 in white cake will cause him to scream and run as if pursued by killer bees. Preservatives will cause him to break out in a red sweat and will guarantee a wild ride for all those around him. His doctor-ordered chemical and dietary avoidance regimen is complex, time-consuming and expensive, but necessary.

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After exposure to chemicals, including fluoridated tap water, the intensity of his pain creates behaviors that make him appear many times more autistic—because he cannot talk, cannot listen, cannot cope—until the pain subsides. After exposure, his wild and erratic behavior makes him appear violent, but his normal self is a very gentle man, happy in his home, loving his job, enjoying playing the piano and showing tons of love to his family.

Even with the use of a chlorine filter on the showerhead, Kyle's headache, body pain and reduced function follow shortly after the shower. Moving his shower to the evening moves the pain to the evening and into the night, with screams, sweating, rapid heartbeat and violent bed-pounding, shaking our house like an earthquake. Years of out-of-town visits to locations that do not fluoridate, but do chlorinate (with no chlorine filter) have shown that these severe reactions are not present with chlorine alone.

Providing fluoride-free water is very expensive and labor-intensive. My tap water costs me $0.0042 per gallon—but fluoride-free water at the grocery store is $0.45/gal to refill jugs or $1.00 to $3.00 per gallon off the shelf—a mind-blowing 100-700 times more expensive!

My son's greatest impediment to a livable life is pain, not autism. Similar reactions to chemicals are very common in the autistic population and, unfortunately, those that are the most out of control have parents who do not yet know that their fluoridated water could be causing their child's wild behavior. It took me almost two decades to fully discover this, partly because his intolerance to chemicals continues to increase and worsen as he ages.

One might think that we should move to a non-fluoridated area, but Kyle's job took many years to cultivate and was tailor-made for him, with his unique abilities and

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disabilities. It is in the heart of, and surrounded by, fluoridated water districts. He travels to work on Metro Access (a transportation service for disabled persons) which only serves areas in King County that are served by regular buses, an area almost entirely fluoridated.

The chemical drug fluoride can intensify pain and increase autistic symptoms due to their inefficient detoxification system. The cause of autism is unknown, but most experts agree that genetic vulnerability + environmental exposures = the behavioral symptoms labeled "autism". In the 1980's autism affected 1 in 2,000—now it's 1 in 110. Countless parents have reported improvement of their child's behavior and school success by reducing their child's toxic load and providing chemical-free food and fluoride-free water.

Every medication has a risk, including fluoride, but only one medication is delivered to everyone regardless of health status, regardless of vulnerability, regardless of consent, regardless of dose and regardless of individual tolerance. Our babies, children and vulnerable populations need our utmost protection and conservatism from ALL chemicals.

It is unconscionable to add a toxic drug to something so basic to survival as water when there is any chance whatsoever that doing so might harm even a single child and make that water undrinkable and unusable to those with chemical intolerances. There is simply no drug that is safe for everyone. No chemical or drug is benign, not even fluoride.

As a person with a developmental disability, a serious medical condition, and completely reliant on others to protect him, the refusal of public servants to recognize

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the toxicity and harm of fluoridation threatens every aspect of Kyle's right to life, liberty and happiness.

Signed by Audrey Adams, January 14, 2010

STATEMENT OF LINDA MARTIN OF SNOHOMISH WASHINGTON:

Fluoridation harms me and my family and deprives me of my home.

The Fifth Amendment to the US Constitution guarantees that I will not be deprived of property without due process of law. However, I have been forced to move when governments have fluoridated water going to my home. I have not had money to appeal to the Courts, so I have sold my belongings, uprooted my family, and moved to a community which does not fluoridate the water.

If they start fluoridating the valley where I live now, it will be devastating. I will have to move further away from the only family I have, who help me support my autistic son, and will have even more difficulty finding work. Basically, what this all boils down to is a lack of freedom, poverty, unavoidable pain and social isolation.

I can't live where I want to. I can't drink what I want to. I can't eat what I want to. I can't settle down and get comfortable anywhere because I don't know when governments will start fluoridating my water. Even food, which is often high in fluoride, gives me long-term health problems due to the fact that I'm very sensitive to fluoride. I cannot bathe in fluoridated water either. I have skeletal pain, joint pain, skin rashes, gastro-intestinal, vision, memory and thyroid problems when exposed to fluoride.

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For example, during a work potluck on April 24th my heel started aching. I limped out of there, and I'm still limping today. I ate at the potluck because I was afraid of insulting my employer who was anxious for me to try the food and was sitting there watching me eat. If I tell people I can't handle fluoride, they think I'm a nut. This affects all my relationships, and in general has turned me into a hermit. I am having major health issues due to fluoridation, and I can't mention it to anyone. So naturally, they think I'm weird because I can't explain why I make the decisions I do.

I have to live in a rural area far from my relatives and my work, which is very expensive, time-consuming and exhausting. I have to spend a lot of time trying to figure out what food and drink is safe. I send countless emails and make countless phone calls to find out water sources for companies that manufacturer food and drink so I can check the fluoride status. If I can't get answers, or they use multiple manufacturing sites, I can't take the chance. My diet is somewhat monotonous as a result. I buy a lot of local farm produce which I'm sure did not get watered or manufactured with fluoridated water.

Please take action to prevent the spread of fluoridation. People like me need somewhere to live and thrive.

Thank you for your consideration.

Signed by Linda Martin, January 11, 2010

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B. APPLICANTS' FAMILIARITY WITH THE ISSUES AND ARGUMENT PRESENTED BY THE PARTIES

An advisor to the Applicants has been following this case since the time it was filed in superior court and has read all of the briefs filed in Superior Court, the Court of Appeals Division II, and the Supreme Court. Therefore the Applicants are well familiar with the issues and arguments presented by the parties.

C. ISSUES TO WHICH THE AMICI CURIAE BRIEF WILL BE DIRECTED

The Amici Curiae Brief addresses Issues 2 and 5 presented in the Petition for Review at 1-2.

D. APPLICANTS' REASON FOR BELIEVING THAT ADDITIONAL ARGUMENT IS NECESSARY

This Amici Curiae Brief focuses on Issues 2 and 5 and covers selected issues in greater depth than was possible in other briefs. This brief deals for example with the relevance to the case at bar of the 1954 Kaul v Chehalis case as well as the relevance of RCW 57.08.012. It also looks in a different way at the combined effect of the Safe Drinking Water Act, RCW 70.119A.080, and RCW 43.21A.445. Other issues are covered from different perspectives than they have been covered by different amici.

If the Court of Appeals Division II ruling stands, there will be no local jurisdiction in this state where citizens will be allowed to use the local initiative and referendum powers to decide whether or not to allow now unregulated drugs as well as fluoride to be added to their public water supplies.

If this ruling stands it will effectively disenfranchise local voters around the State from having the opportunity to vote on these issues. Other states will follow the

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lead of Washington State and this could lead to their citizens being disenfranchised as well.

For more than fifty years, local voters in this state and this nation have used local initiatives and referendums to vote on local public health regulations to not have fluoridated water. The Opinion should not be allowed to end local voters' right to continue to exercise police power to have local initiatives and referendums to prohibit fluoridation and local voters should be allowed to prohibit or limit other drugs as well.

Dated this 22nd day of January, 2010.

Respectfully submitted,

JAMES ROBERT DEAL PLLC

By: _____

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OUR WATER-OUR CHOICE, and PROTECT OUR WATERS,
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AMICI CURIAE BRIEF OF AUDREY ADAMS AND LINDA MARTIN IN SUPPORT OF PETITIONERS

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I. IDENTITY AND INTEREST OF AMICI CURIAE

The Amici Curiae are Audrey Adams and Linda Martin, who represent a subset of the population who are highly sensitive and have adverse reactions to fluoridated water and fluoride in any form. Their interests and personal adverse reactions to fluoridation are set forth in Appendix A hereto.

II. ISSUES ADDRESSED

This Amici Curiae Brief addresses Issues 2 and 5 presented in the Petition for Review.

III. BRIEF STATEMENT OF THE CASE

Audrey Adams and Linda Martin adopt the Brief Statement of the Case in the Amici Curiae Brief of International Academy of Oral Medicine and Toxicology, Oregon Citizens for Safe Drinking Water, and Fluoride Action Network in Support of Petitioners ("IAOMT Amici Brief").

IV. 1954 KAUL CASE SET TONE IN STATE FOR FLUORIDATION BUT NOW MORE IS KNOWN ABOUT FLUORIDATION

The Kaul case was handed down in 1954. Kaul v Chehalis, 45 Wn.2d 616, 277 P.2d 352 (1954). Amici will note the similarities and differences and how it applies to the case at bar. Kaul dealt with an appellant who was suing to enjoin water fluoridation by a city (Kaul at 617), while the case at bar deals with

petitioners who are suing to have Initiatives put on the ballot which prohibit or limit adding medication, including fluoride, to water. In Kaul there is no debate over whether the issue is legislative or administrative because this debate applies only in the context of ballot initiatives and not in the context of a suit for injunction.

The Kaul Court agreed with the trial court's finding:

> That the addition of fluoride to the Chehalis water supply is intended solely for use in prevention of tooth decay primarily in children up to 14 years of age, and particularly between the ages of 6 and 14 and will prevent some tooth decay in some children. Kaul at 618.

The Kaul Court agreed with the trial court's finding that:

> fluoride is a deadly poison used commercially for the extermination of rats and other vermin. Id.

The Kaul Court agreed with the trial court's finding that:

> chlorine is added to water to affect either bacteria or plant life in the water, while fluoride has no effect upon the water or upon the plant life in the water but remains free in the water and is artificially added solely for the effect it has on the individual drinking the water. Id.

The Kaul Court, apparently quoting from the trial court's findings stated:

> If the water is fluoridated, it will be necessary for appellant and all other users "to use it for domestic purposes including drinking, because there is no other practical source of supply." Id.

The Kaul court stated:

> It is the duty of the city to furnish appellant with wholesome water, free from contamination. Id. at 621.

The Kaul court endorsed the finding of the trial court regarding constitutional issues:

> The trial court did not err in concluding that the ordinance was a valid exercise of the police power and violated no constitutional rights guaranteed to [Mr. Kaul]. Id. at 625.

The Kaul court rejected Mr. Kaul's objection to a trial court's conclusion:

> that the city is not engaged in selling drugs, practicing medicine, dentistry, or pharmacy as defined by statute. Id.

The Kaul court agreed with the trial court's finding

> that the addition to the municipal water supply of Chehalis of a source of fluoride ion, such as sodium silico fluoride, in the proportion of one part per million will not amount to a contamination and the water will continue to be wholesome. Id. at 621.

The Merriam-Webster dictionary online defines "wholesome" as "promoting health or well-being of mind or spirit." The Cambridge Advanced Learner's Dictionary online defines "wholesome" as "conducive to sound health or well-being good for you, and likely to improve your life either physically, morally or emotionally."

In the Kaul case Mr. Arthur Kaul did not "question the findings of fact entered by the trial court." Kaul at 617. He therefore conceded that fluoridated water was not harmful and was conducive to sound health. It seems that both parties were convinced that fluoride was both harmless and beneficial. The

dissenters were bound by these findings but still expressed a suspicion regarding mass medication.

The only aspect of the Kaul case which might directly impact the case at bar is the agreement of the Kaul court with the trial court's conclusion that in fluoridating its water a city "is not engaged in selling drugs, practicing medicine, dentistry, or pharmacy as defined by statute." Id. at 625. The IAOMT and WASW amici briefs demonstrate that the City of Port Angeles is in fact engaged in the sale of drugs by fluoridating city water, in violation of numerous federal and state statutes and regulations which pertain to drugs and pharmacy.

The Food, Drug, and Cosmetics Act (FDCA) defines a drug as an article "... intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal. 21 U.S.C. 321 (g)(1)(B). This definition was in effect in 1954 when Kaul was decided. Kaul (dissent) at 631. Washington law defines a drug as a substance "... intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals. RCW 69.04.009; RCW 69.41.010(9)(b). RCW 69.04.009 was adopted in 1945 and may go back to 1907. Kaul at 625 states, "the city is not engaged in selling drugs." But there is no indication that the Kaul Court applied the State's definition of "drug" that is relevant for intrastate sales of fluoridated water by the City of Chehalis.

Even if a city chooses to administer the fluoride-water drug under its police powers in order to improve public health, it should dispense such a drug acting only through licensed practitioners. The drug dispensed should be manufactured by licensed drug manufacturers, and issued to patients based on their age, weight, and health. Instructions should be given to patients as to how much of the drug they should consume each day, how long they should continue to take such drug, and under what circumstances they should return to their doctors for further consultation.

Not all patients have the same reactions to drugs. Patients are unique and while the majority may react favorably to a drug, a minority will have adverse reactions, and that minority should be protected. The practice of medicine is not a mechanical process, and the doctor cannot be eliminated in this practice. Although a city may have police power to medicate people, the drug administered must be prescribed and dispensed by a licensed practitioner, and a city inserting concentrated fluoride into water and creating a new drug, fluoride-water, is neither a licensed practitioner nor operating under the license of a practitioner.

A city should not rely on its police powers to circumvent laws which require that drugs be dispensed through a licensed practitioner and according to law.

As to whether there was a constitutional violation that Mr. Kaul could claim was more debatable then than it would be today because the parties in that

case agreed fluoridation was not harmful and was actually beneficial. This then set up a "pure" constitutional question: Was the forced administration of a harmless and even beneficial drug which was administered to prevent a non-contagious disease a violation of Mr. Kaul's constitutional rights? See Kaul at 621-25.

Thus the declaration by the Kaul majority that fluoride was not a drug and by implication that it could be administered without the participation of a doctor and free of all other laws regulating drugs, created an out-law situation, with fluoride in a void all by itself, outside all regulatory drug laws. This aspect of Kaul at minimum should be overturned or distinguished by the current Court.

The Kaul dissenters expressed the opinion that even if fluoride were harmless and beneficial it still violated Mr. Kaul's rights. Judge Donworth in dissent asked what other drugs the city might add to its water. The city would "have the right to put into it any medicinal agent from patent medicines to antibiotics ... which they may from time to time determine to be beneficial to the public health." Id. at 635. Throughout the dissenting opinions there is evident a general distrust for medicines administered to all. What medicine does not have contraindications for some people and in some amounts?

The Kaul majority stated:

> Dental caries is neither infectious nor contagious. This, however, does not detract from the fact that it is a common disease of

> mankind. As such, its prevention and extermination come within the police power of the state. Id. at 620.

Judge Hamley in dissent argued that a city's police power to medicate people extends only to contagious diseases:

> [W]hether the police power is being exercised for the protection of public health or for any other reason, it may not extend to the point of impairing a constitutionally guaranteed personal right, unless justified by "conditions essential to the equal enjoyment of the same right by others" ... or by "pressure of great dangers...." Id. at 639.

In 1954 evidence that questioned the safety and effectiveness of drinking water fluoridation had not yet been marshaled to the extent it is today. Times have changed. Noted authorities have amassed mountains of evidence that call the practice into question. Fluoridation is highly controversial, and those who oppose it speak with authority. The National Research Council, a branch of the National Academies of Science, the highest and most respected research group in the land, has stated bluntly that the EPA 4 ppm MCLG is not protective of health and that a lower MCLG should be set. (National Research Council, *Fluoride in Drinking Water: A Scientific Review of EPA's Standards* (2006), at page 8, referred to herein as "2006 NRC Report.") This means that there is today no accepted safe level of fluoride in drinking water and thus no accepted safe amount which can be added to drinking water. Nor is it debatable that the EPA has been completely silent since 2006 and has failed to set a lower MCLG. Nor is it debatable that the EPA Scientists Union, the people who do the actual work, as opposed to the

political appointees, are adamantly opposed to water fluoridation. Appendix B hereto.

Perhaps the best way to explain the majority decision in Kaul is to note that the majority was convinced that fluoride did no harm and provided great help, and therefore, the majority decided it should go forward. The majority could not come up with a legal justification for fluoridation, so they stretched the state and federal constitutions to allow it. Justice Hamley in dissent lamented the decision by asking:

> Can we, . . . withstand the insidious erosion [of our basic liberties] produced by a multiplicity of little instances where, as here, a guaranteed right is set aside because it interferes with what is said to be good for us? Id. at 641.

Amici conclude their remarks regarding Kaul by saying first that the definition of a "drug" has not changed since 1954, so the Kaul holding that fluoridated water was not a drug was wrong from the beginning. Second, the standards for deciding whether fluoridation or other medication delivered via a public water system can be enjoined or can be prohibited or limited by initiative are different. Third, Mr. Kaul was not allowed to enjoin fluoridation because it was good for all and harmful to none. Today there is evidence that fluoridation of water is harmful and other drugs put into water supplies could be harmful as well. It is a public health issue to make a decision to prohibit or limit putting potentially harmful drugs into public water supplies serving the city. Just as fluoridation

decisions are considered legislative[1] because they are public health decisions, so are the Initiatives considered legislative because for the first time they prohibit or limit any person from putting any drug or medication in any public water supply serving the City to protect local public health. And just as Kaul found that a city could use police power to fluoridate its water if the water would remain wholesome and be beneficial to some so also should this Court find that the Citizens of Port Angeles can use police power granted to the corporate city to prohibit or limit drugs in public water supplies to protect public health.

V. McQUILLIN ON INITIATIVES CLARIFIES THE LAW REGARDING INITIATIVES AND REFERENDUMS.

Attached hereto as Appendix C are relevant excerpts from McQuillin, The Law of Municipal Corporations, Third Edition, 2002 Revised Volume, with July 2009 Cumulative Supplement (referred to herein as "McQuillin") regarding initiatives and referendums. It states:

> The initiative and referendum are recognized as instruments of democratic government, widely used of great value. Where they are authorized for a municipal corporation, they are entitled to respect and should not be abridged by withdrawal from the processes of matter with which they are intended to deal. The people's right to exercise the initiative power is a right that must be jealously defended by the courts. . . .
>
> The First Amendment provides that Congress shall make no law abridging the freedom of speech. Because state action includes city ordinances

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[1] 4 McQuillin Municipal Corporations Sec. 16:56 (3rd Ed.) (2002). Appendix C hereto particularly at pages 420-22.

adopted under state authority, the First Amendment prohibitions extend to local initiative and referendum procedures.

McQuillin, Sec. 16:47 at page 368-70 (citations omitted) (full text in Appendix C hereto).

Further McQuillin states:

> The power of initiative or referendum may be conferred by the sovereignty upon a municipality with respect to any matter, legislative or administrative, within the realm of local affairs; and often the power, as conferred, is extensive, including all ordinances and resolutions and practically all actions that might be taken by a municipal council. The power, however, cannot be unlimited. It is restricted to legislation within the power of the municipality to enact or adopt. A limitation of the power by general law may either be express or arise by implication, but the limitation will not be implied unless the limiting provisions are clear or compelling. At least the power extends to all matters of local concern other than those excluded by express or necessarily implied exceptions contained in charter, statutory, or constitutional provisions. Id. at Sec. 16:53 at pages 391-94 (citations omitted) (full text in Appendix C).

VI. RCW 57.08.012 MAKES FLUORIDATION AND BY IMPLICATION ADDITION OF ALL DRUGS TO PUBLIC WATER SUPPLIES A LEGISLATIVE AND NOT AN ADMINISTRATIVE ISSUE.

RCW 57.08.012 reads as follows:

> A water district by a majority vote of its board of commissioners may fluoridate the water supply system of the water district. The commissioners may cause the proposition of fluoridation of the water supply to be submitted to the electors of the water district at any general election or special election to be called for the purpose of voting on the proposition. The proposition must be approved by a majority of the electors voting on the proposition to become effective.

According to this statute, the issue of whether or not water will be

fluoridated is of the type or kind that is suitable to being submitted to a vote of the electorate. It serves as a clear indication that the Legislature regards this as an issue of legislative importance.

In the City's Answer to Amicus Curiae Memorandum of Fluoride Class Action at page 12, the City tried to undercut this analysis by arguing that RCW 57.08.012 applied to water districts only, that it merely allowed water district commissioners to submit a fluoridation issue to a vote, and that the commissioners were not required to submit the issue to a vote if a vote was requested by the electors. The City missed the point. Although the water commissioners are not required by this statute to put water fluoridation to a vote, the matter is nevertheless of the kind or type which can be submitted to voters.

We know much more about the health problems associated with fluoridation than we did back when the legislature passed RCW 57.08.012. However, even then there was controversy about whether fluoridation was safe and appropriate. The Legislature acknowledged this by making the issue one which could be put to a public vote, at least with regard to water districts. Fluoridation was a policy issue at the time RCW 57.08.012 was passed, and it remains a policy issue today.

There was opposition to fluoridation at the time RCW 57.08.012 was passed, and safety issues were raised then. Whether fluoridation

should be considered safe is a policy issue. It is because it is a policy issue that the Legislature left the question ultimately to the voters of each water district. This confirms that this issue is legislative and not merely administrative.

VII. THE SAFE DRINKING WATER ACT FORBIDS ENACTING REGULATIONS WHICH REQUIRE ADDING MEDICATION TO DRINKING WATER AND THIS RESTRICTION MAY FLOW DOWN TO THE STATES AND MUNICIPALITIES

Note that RCW 70.119A.080 provides:

> (1) The department [Department of Health] shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. ...
>
> (2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.
>
> (3) The department is authorized to accept federal grants for the administration of a primary program.

Note also that RCW 43.21A.445 provides:

> The department of ecology, the department of natural resources, the department of health, and the oil and gas conservation committee are authorized to participate fully in and are empowered to administer all programs of Part C of the federal Safe Drinking Water Act (42 U.S.C. Sec. 300h et seq.), as it exists on June 19, 1986, contemplated for state participation in administration under the act.

As noted by the Court of Appeals in its Opinion at 7 (Petition for Review at A-7), the EPA has granted primacy to the state of Washington to implement the Safe Drinking Water Act ("SDWA"). 40 C.F.R. 42.10 provides as follows:

> A State has primary enforcement responsibility for public water systems in the State during any period for which the Administrator determines ... that such State, pursuant to appropriate State legal authority:
>
> (a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations (NPDWRs) in effect under part 141 of this chapter....

In RCW 43.21A.445 several Washington agencies led by the Department of Health are "... authorized to participate fully in and are empowered to administer ..." the SDWA.

Next, note that the SDWA specifically states at 42 USC 300g-1(b)(11):

> No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

The only substances which the SDWA may require that states and municipalities add to their drinking water are those which remove contaminants. Substances for preventive health care may not be added. That would include drugs, medicine, and ... fluoride.

It comes as a surprise to those studying this area of the law to learn that the SDWA, which is administered by the EPA, regulates only the removal of contaminants which naturally appear in water or which have been added through pollution. It does authorize adding chemicals, but only those which will remove contaminants.

Many think that because the SDWA has a 4 ppm maximum contaminant level ("MCL") for fluoride, that it authorizes the insertion of fluoride up to a 4 ppm maximum. This is not so. The EPA and the SDWA only requires removal of fluoride if it exceeds 4 ppm.

The Department of Health is the lead agency empowered to administer the SDWA in Washington. Because the SDWA prohibits requiring "the addition of any substance for preventive health care purposes" and because the SDWA requires that state "... drinking water regulations" be "no less stringent than the national primary drinking water regulations," Washington regulations likewise must be so limited. The Department and Board of Health may not authorize or require municipalities to add fluoride or any other medication intended for "preventive health care purposes."

The Department of Health agrees that it does not require fluoridation. See the attached e-mail written by Victor Coleman, senior policy advisor for the Department of Health, to Dr. Bill Osmunson,

provided as Appendix D hereto, which makes this clear. Likewise, the 2006 NRC Report at page 1 also makes this clear:

> In 1986, EPA established an MCLG and MCL for fluoride at a concentration of 4 milligrams per liter (mg/L) and an SMCL of 2 mg/L. These guidelines are restrictions on the total amount of fluoride allowed in drinking water. ... EPA's drinking-water guidelines are not recommendations about adding fluoride to drinking water to protect the public from dental caries. ... Instead, EPA's guidelines are maximum allowable concentrations in drinking water intended to prevent toxic or other adverse effects that could result from exposure to fluoride.

This limitation on "the addition of any substance for preventive health care purposes" flows down to the states, but does it flow down further to municipalities? 40 C.F.R. 142.3 provides:

> "... [T]his part [40 C.F.R.. Part 142—National Primary Drinking Water Regulations Implementation] applies to each public water system in each State.

40 C.F.R. 142.2 defines a "public water system:"

> Public water system or PWS means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year.

Using the wording of this federal regulation, it would appear that the Port Angeles city council enacted a "drinking water regulation" which requires "the addition of" a "substance for preventive health care purposes unrelated to contamination of drinking water," namely fluoride.

The Court of Appeals looking at RCW 70.119A.080 and regulations such as WAC 246-290, goes off in an entirely different direction, stating:

> Under the Department of Health's regulatory scheme, the test here is whether the only decisions left are administrative in nature. . . . Decisions by local water companies about which chemicals to add ... are administrative ... because those decisions merely implement plans already adopted and supervised by the Health Department.... The standard is ... whether a plan has already been adopted .... Since the initiatives seem to pursue/affect a plan already in place, they are administrative in nature and therefore invalid. Opinion at 7-8 (Petition for Review at A-7 and A-8).

The Court of Appeals considers the field to be fully occupied by state statutes and regulations. If this is true, then the corporate City would, like the state, be prohibited by the SDWA from adding a "substance for preventive health care purposes." If the limitations imposed by the SDWA do flow down to the City, then the City's decision to fluoridate was ultra vires, and for that reason too the electorate should have the right to vote to reverse an ultra vires decision.

On its face WAC 246-290-460 does not regulate the decision to fluoridate but only sets out procedures to follow if a municipality decides to fluoridate. Thus state regulations have not occupied the fluoridation field and, as well, say nothing about adding other medicines to public water supplies.

If the state has not occupied the field, there is room for the corporate City, and thus the electors acting through an initiative, to adopt ordinances that prohibit or limit anyone from putting any medications in any public water supplies serving the City.

VIII. CONCLUSION

Amici Audrey Adams and Linda Martin oppose putting medications in public water supplies. They ask this Court to allow the Initiatives to be put on the ballot in Port Angeles so the citizens can decide if they want to have their public water supplies free of drugs and similar substances.

Dated this 22th day of January, 2010.

Respectfully submitted,

James Robert Deal Attorney PLLC

By: _____
James Robert Deal WSBA No. 8103
Attorney for Amici Audrey Adams and Linda Martin

CERTIFICATE OF SERVICE

I certify that on the 22nd day of January, 2010, I personally served a true and correct copy of this certificate and the Amici Curiae Brief of Audrey Adams and Linda Martin on the following:

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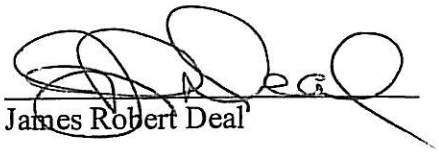
Dated this 22nd day of January, 2010 at Lynnwood, Washington.



James Robert Deal

Appendix A.

IDENTITY AND INTEREST OF AMICI CURIAE

LETTER OF AUDREY ADAMS, RENTON, WASHINGTON:

January 14, 2010

To the Washington Supreme Court:

This letter regards the case of the City of Port Angeles v. Our Water-Our Choice and Protect Our Waters, v. Washington Dental Service Foundation LLC, Case No. 82225-5. I am competent to testify, age 54, and make this affidavit under oath and penalty of perjury.

My son Kyle Adams, age 24, has autism and suffers from pain, severe headaches and other symptoms when exposed to chemicals in his food, in the air or in his water. He works as an office assistant at Highline Community College, but cannot do his job after chemical exposures. He must be protected from such exposures, but water is the hardest to avoid.

His sensitivity to chemicals is so great that he cannot drink fluoridated water and cannot shower in fluoridated water without suffering a severe headache that lasts for hours. Someone wearing perfume will cause his heart rate to skyrocket (demonstrated by accident in the doctor's office). A tiny bit of yellow dye #5 in white cake will cause him to scream and run as if pursued by killer bees. Preservatives will cause him to break out in a red sweat and will guarantee a wild ride for all those around him. His doctor-ordered chemical and dietary avoidance regimen is complex, time-consuming and expensive, but necessary.

After exposure to chemicals, including fluoridated tap water, the intensity of his pain creates behaviors that make him appear many times more autistic—because he cannot talk, cannot listen, cannot cope—until the pain subsides. After exposure, his wild and erratic behavior makes him appear violent, but his normal self is a very gentle man, happy in his home, loving his job, enjoying playing the piano and showing tons of love to his family.

Even with the use of a chlorine filter on the showerhead, Kyle's headache, body pain and reduced function follow shortly after the shower. Moving his shower to the evening moves the pain to the evening and into the night, with screams, sweating, rapid heartbeat and violent bed-pounding, shaking our house like an earthquake. Years of out-of-town visits to locations that do not fluoridate, but do chlorinate (with no chlorine filter) have shown that these severe reactions are not present with chlorine alone.

Providing fluoride-free water is very expensive and labor-intensive. My tap water costs me $0.0042 per gallon—but fluoride-free water at the grocery store is $0.45/gal to refill jugs or $1.00 to $3.00 per gallon off the shelf—a mind-blowing 100-700 times more expensive! My son's greatest impediment to a livable life is pain, not autism. Similar reactions to chemicals are very common in the autistic population and, unfortunately, those that are the most out of control have parents who do not yet know that their fluoridated water could be

causing their child's wild behavior. It took me almost two decades to fully discover this, partly because his intolerance to chemicals continues to increase and worsen as he ages.

One might think that we should move to a non-fluoridated area, but Kyle's job took many years to cultivate and was tailor-made for him, with his unique abilities and disabilities. It is in the heart of, and surrounded by, fluoridated water districts. He travels to work on Metro Access (a transportation service for disabled persons) which only serves areas in King County that are served by regular buses, an area almost entirely fluoridated.

The chemical drug fluoride can intensify pain and increase autistic symptoms due to their inefficient detoxification system. The cause of autism is unknown, but most experts agree that *genetic vulnerability + environmental exposures* = the behavioral symptoms labeled "autism". In the 1980's autism affected 1 in 2,000—now it's 1 in 110. Countless parents have reported improvement of their child's behavior and school success by reducing their child's toxic load and providing chemical-free food and fluoride-free water.

Every medication has a risk, including fluoride, but only one medication is delivered to everyone regardless of health status, regardless of vulnerability, regardless of consent, regardless of dose and regardless of individual tolerance. Our babies, children and vulnerable populations need our utmost protection and conservatism from ALL chemicals.

It is unconscionable to add a toxic drug to something so basic to survival as water when there is any chance whatsoever that doing so might harm even a single child and make that water undrinkable and unusable to those with chemical intolerances. There is simply no drug that is safe for everyone. No chemical or drug is benign, not even fluoride.

As a person with a developmental disability, a serious medical condition, and completely reliant on others to protect him, the refusal of public servants to recognize the toxicity and harm of fluoridation threatens every aspect of Kyle's right to life, liberty and happiness.

Sincerely,

Audrey Adams, Renton, Washington

LETTER OF LINDA MARTIN, SNOQUALMIE, WASHINGTON

January 11, 2010

To the Washington Supreme Court:

Fluoridation harms me and my family and deprives me of my home.

The Fifth Amendment to the US Constitution guarantees that I will not be deprived of property without due process of law. However, I have been forced to move when governments have fluoridated water going to my home. I have not had money to appeal to the Courts, so I have sold my belongings, uprooted my family, and moved to a community which does not fluoridate the water.

If they start fluoridating the valley where I live now, it will be devastating. I will have to move further away from the only family I have, who help me support my autistic son, and will have even more difficulty finding work. Basically, what this all boils down to is a lack of freedom, poverty, unavoidable pain and social isolation.

I can't live where I want to. I can't drink what I want to. I can't eat what I want to. I can't settle down and get comfortable anywhere because I don't know when governments will start fluoridating my water. Even food, which is often high in fluoride, gives me long-term health problems due to the fact that I'm very sensitive to fluoride. I cannot bathe in fluoridated water either. I have skeletal pain, joint pain, skin rashes, gastro-intestinal, vision, memory and thyroid problems when exposed to fluoride.

For example, during a work potluck on April 24th my heel started aching. I limped out of there, and I'm still limping today. I ate at the potluck because I was afraid of insulting my employer who was anxious for me to try the food and was sitting there watching me eat. If I tell people I can't handle fluoride, they think I'm a nut. This affects all my relationships, and in general has turned me into a hermit. I am having major health issues due to fluoridation, and I can't mention it to anyone. So naturally, they think I'm weird because I can't explain why I make the decisions I do.

I have to live in a rural area far from my relatives and my work, which is very expensive, time-consuming and exhausting. I have to spend a lot of time trying to figure out what food and drink is safe. I send countless emails and make countless phone calls to find out water sources for companies that manufacturer food and drink so I can check the fluoride status. If I can't get answers, or they use multiple manufacturing sites, I can't take the chance. My diet is somewhat monotonous as a result. I buy a lot of local farm produce which I'm sure did not get watered or manufactured with fluoridated water.

Please take action to prevent the spread of fluoridation. People like me need somewhere to live and thrive.

Thank you for your consideration.

Sincerely,

Linda Martin

STATEMENT OF
Dr. J. WILLIAM HIRZY
NATIONAL TREASURY EMPLOYEES UNION CHAPTER 280
BEFORE THE
SUBCOMMITTEE ON WILDLIFE, FISHERIES AND DRINKING WATER
UNITED STATES SENATE
JUNE 29, 2000

Good morning Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before this Subcommittee to present the views of the union, of which I am a Vice-President, on the subject of fluoridation of public water supplies.

Our union is comprised of and represents the professional employees at the headquarters location of the U.S. Environmental Protection Agency in Washington D.C. Our members include toxicologists, biologists, chemists, engineers, lawyers and others defined by law as "professionals." The work we do includes evaluation of toxicity, exposure and economic information for management's use in formulating public health and environmental protection policy. I am not here as a representative of EPA, but rather as a representative of EPA headquarters professional employees, through their duly elected labor union. The union first got involved in this issue in 1985 as a matter of professional ethics. In 1997 we most recently voted to oppose fluoridation. Our opposition has strengthened since then.

Summary of Recommendations

1) We ask that you order an independent review of a cancer bioassay previously mandated by Congressional committee and subsequently performed by Battelle Memorial Institute with appropriate blinding and instructions that all reviewer's independent determinations be reported to this Committee.

2) We ask that you order that the two waste products of the fertilizer industry that are now used in 90% of fluoridation programs, for which EPA states they are not able to identify any chronic studies, be used in any future toxicity studies, rather than a substitute chemical. Further, since federal agencies are actively advocating that each man woman and child drink, eat and bathe in these chemicals, silicofluorides should be placed at the head of the list for establishing a MCL that complies with the Safe Drinking Water Act. This means that the MCL be protective of the most sensitive of our population, including infants, with an appropriate margin of safety for ingestion over an entire lifetime.

3) We ask that you order an epidemiology study comparing children with dental fluorosis to those not displaying overdose during growth and development years for behavioral and other disorders.

4) We ask that you convene a joint Congressional Committee to give the only substance that is being mandated for ingestion throughout this country the full hearing that it deserves.

National Review of Fluoridation The Subcommittee's hearing today can only begin to get at the issues surrounding the policy of water fluoridation in the United States, a massive experiment that has been run on the American public, without informed consent, for over fifty years. The last Congressional hearings

on this subject were held in 1977. Much knowledge has been gained in the intervening years. It is high time for a national review of this policy by a Joint Select Committee of Congress. New hearings should explore, at minimum, these points:

1) excessive and un-controlled fluoride exposures;
2) altered findings of a cancer bioassay;
3) the results and implications of recent brain effects research;
4) the "protected pollutant" status of fluoride within EPA;
5) the altered recommendations to EPA of a 1983 Surgeon General's Panel on fluoride;
6) the results of a fifty-year experiment on fluoridation in two New York communities;
7) the findings of fact in three landmark lawsuits since 1978;
8) the findings and implications of recent research linking the predominant fluoridation chemical with elevated blood-lead levels in children and anti-social behavior; and
9) changing views among dental researchers on the efficacy of water fluoridation

Fluoride Exposures Are Excessive and Un-controlled According to a study by the National Institute of Dental Research, 66 percent of America's children in fluoridated communities show the visible sign of over-exposure and fluoride toxicity, dental fluorosis (1). That result is from a survey done in the mid-1980's and the figure today is undoubtedly much higher.

Centers for Disease Control and EPA claim that dental fluorosis is only a "cosmetic" effect. God did not create humans with fluorosed teeth. That effect occurs when children ingest more fluoride than their bodies can handle with the metabolic processes we were born with, and their teeth are damaged as a result. And not only their teeth. Children's bones and other tissues, as well as their developing teeth are accumulating too much fluoride. We can see the effect on teeth. Few researchers, if any, are looking for the effects of excessive fluoride exposure on bone and other tissues in American children. What has been reported so far in this connection is disturbing. One example is epidemiological evidence (2a, 2b) showing elevated bone cancer in young men related to consumption of fluoridated drinking water.

Without trying to ascribe a cause and effect relationship beforehand, we do know that American children in large numbers are afflicted with hyperactivity-attention deficit disorder, that autism seems to be on the rise, that bone fractures in young athletes and military personnel are on the rise, that earlier onset of puberty in young women is occurring. There are biologically plausible mechanisms described in peer-reviewed research on fluoride that can link some of these effects to fluoride exposures (e.g. 3,4,5,6). Considering the economic and human costs of these conditions, we believe that Congress should order epidemiology studies that use dental fluorosis as an index of exposure to determine if there are links between such effects and fluoride over-exposure.

In the interim, while this epidemiology is conducted, we believe that a national moratorium on water fluoridation should be instituted. There will be a hue and cry from some quarters, predicting increased dental caries, but Europe has about the same rate of dental caries as the U.S. (7) and most European countries do not fluoridate (8). I am submitting letters from European and Asian authorities on this point. There are studies in the U.S. of localities that have interrupted fluoridation with no discernable increase in dental caries rates

(e.g., 9). And people who want the freedom of choice to continue to ingest fluoride can do so by other means.

Cancer Bioassay Findings In 1990, the results of the National Toxicology Program cancer bioassay on sodium fluoride were published (10), the initial findings of which would have ended fluoridation. But a special commission was hastily convened to review the findings, resulting in the salvation of fluoridation through systematic down-grading of the evidence of carcinogenicity. The final, published version of the NTP report says that there is, "equivocal evidence of carcinogenicity in male rats," changed from "clear evidence of carcinogenicity in male rats."

The change prompted Dr. William Marcus, who was then Senior Science Adviser and Toxicologist in the Office of Drinking Water, to blow the whistle about the issue (22), which led to his firing by EPA. Dr. Marcus sued EPA, won his case and was reinstated with back pay, benefits and compensatory damages. I am submitting material from Dr. Marcus to the Subcommittee dealing with the cancer and neurotoxicity risks posed by fluoridation.

We believe the Subcommittee should call for an independent review of the tumor slides from the bioassay, as was called for by Dr. Marcus (22), with the results to be presented in a hearing before a Select Committee of the Congress. The scientists who conducted the original study, the original reviewers of the study, and the "review commission" members should be called, and an explanation given for the changed findings.

Brain Effects Research Since 1994 there have been six publications that link fluoride exposure to direct adverse effects on the brain. Two epidemiology studies from China indicate depression of I.Q. in children (11,12). Another paper (3) shows a link between prenatal exposure of animals to fluoride and subsequent birth of off-spring which are hyperactive throughout life. A 1998 paper shows brain and kidney damage in animals given the "optimal" dosage of fluoride, viz. one part per million (13). And another (14) shows decreased levels of a key substance in the brain that may explain the results in the other paper from that journal. Another publication (5) links fluoride dosing to adverse effects on the brain's pineal gland and pre-mature onset of sexual maturity in animals. Earlier onset of menstruation of girls in fluoridated Newburg, New York has also been reported (6).

Given the national concern over incidence of attention deficit-hyperactivity disorder and autism in our children, we believe that the authors of these studies should be called before a Select Committee, along with those who have critiqued their studies, so the American public and the Congress can understand the implications of this work.

Fluoride as a Protected Pollutant The classic example of EPA's protective treatment of this substance, recognized the world over and in the U.S. before the linguistic de-toxification campaign of the 1940's and 1950's as a major environmental pollutant, is the 1983 statement by EPA's then Deputy Assistant Administrator for Water, Rebecca Hanmer (15), that EPA views the use of hydrofluosilicic acid recovered from the waste stream of phosphate fertilizer manufacture as,

"...an ideal solution to a long standing problem. By recovering by-product fluosilicic acid (sic) from fertilizer manufacturing, water and air pollution are minimized, and water authorities have a low-cost source of fluoride..."

In other words, the solution to pollution is dilution, as long as the pollutant is dumped straight into drinking water systems and not into rivers or the atmosphere. I am submitting a copy of her letter.

Other Federal entities are also protective of fluoride. Congressman Calvert of the House Science Committee has sent letters of inquiry to EPA and other Federal entities on the matter of fluoride, answers to which have not yet been received.

We believe that EPA and other Federal officials should be called to testify on the manner in which fluoride has been protected. The union will be happy to assist the Congress in identifying targets for an inquiry. For instance, hydrofluosilicic acid does not appear on the Toxic Release Inventory list of chemicals, and there is a remarkable discrepancy among the Maximum Contaminant Levels for fluoride, arsenic and lead, given the relative toxicities of these substances.

Surgeon General's Panel on Fluoride We believe that EPA staff and managers should be called to testify, along with members of the 1983 Surgeon General's panel and officials of the Department of Human Services, to explain how the original recommendations of the Surgeon General's panel (16) were altered to allow EPA to set otherwise unjustifiable drinking water standards for fluoride.

Kingston and Newburg, New York Results In 1998, the results of a fifty-year fluoridation experiment involving Kingston, New York (un-fluoridated) and Newburg, New York (fluoridated) were published (17). In summary, there is no overall significant difference in rates of dental decay in children in the two cities, but children in the fluoridated city show significantly higher rates of dental fluorosis than children in the un-fluoridated city.

We believe that the authors of this study and representatives of the Centers For Disease Control and EPA should be called before a Select Committee to explain the increase in dental fluorosis among American children and the implications of that increase for skeletal and other effects as the children mature, including bone cancer, stress fractures and arthritis.

Findings of Fact by Judges In three landmark cases adjudicated since 1978 in Pennsylvania, Illinois and Texas (18), judges with no interest except finding fact and administering justice heard prolonged testimony from proponents and opponents of fluoridation and made dispassionate findings of fact. I cite one such instance here.

In November, 1978, Judge John Flaherty, now Chief Justice of the Supreme Court of Pennsylvania, issued findings in the case, Aitkenhead v. Borough of West View, tried before him in the Allegheny Court of Common Pleas. Testimony in the case filled 2800 transcript pages and fully elucidated the benefits and risks of water fluoridation as understood in 1978. Judge Flaherty issued an injunction against fluoridation in the case, but the injunction was overturned on jurisdictional grounds. His findings of fact were not disturbed by appellate action. Judge Flaherty, in a July, 1979 letter to the Mayor of Aukland New Zealand wrote the following about the case:

"In my view, the evidence is quite convincing that the addition of sodium fluoride to the public water supply at one part per million is extremely deleterious to the human body, and, a review of the evidence will disclose that there was no convincing evidence to the contrary...

"Prior to hearing this case, I gave the matter of fluoridation little, if any, thought, but I received quite an education, and noted that the proponents of fluoridation do nothing more than try to impune (sic) the objectivity of those who oppose fluoridation."

In the Illinois decision, Judge Ronald Niemann concludes: "This record is barren of any credible and reputable scientific epidemiological studies and or analysis of statistical data which would support the Illinois Legislature's determination that fluoridation of the water supplies is both a safe and effective means of promoting public health."

Judge Anthony Farris in Texas found: "[That] the artificial fluoridation of public water supplies, such as contemplated by {Houston} City ordinance No. 80-2530 may cause or contribute to the cause of cancer, genetic damage, intolerant reactions, and chronic toxicity, including dental mottling, in man; that the said artificial fluoridation may aggravate malnutrition and existing illness in man; and that the value of said artificial fluoridation is in some doubt as to reduction of tooth decay in man."

The significance of Judge Flaherty's statement and his and the other two judges' findings of fact is this: proponents of fluoridation are fond of reciting endorsement statements by authorities, such as those by CDC and the American Dental Association, both of which have long-standing commitments that are hard if not impossible to recant, on the safety and efficacy of fluoridation. Now come three truly independent servants of justice, the judges in these three cases, and they find that fluoridation of water supplies is not justified.

Proponents of fluoridation are absolutely right about one thing: there is no real controversy about fluoridation when the facts are heard by an open mind.

I am submitting a copy of the excerpted letter from Judge Flaherty and another letter referenced in it that was sent to Judge Flaherty by Dr. Peter Sammartino, then Chancellor of Fairleigh Dickenson University. I am also submitting a reprint copy of an article in the Spring 1999 issue of the Florida State University Journal of Land Use and Environmental Law by Jack Graham and Dr. Pierre Morin, titled "Highlights in North American Litigation During the Twentieth Century on Artificial Fluoridation of Public Water. Mr. Graham was chief litigator in the case before Judge Flaherty and in the other two cases (in Illinois and Texas).

We believe that Mr. Graham should be called before a Select Committee along with, if appropriate, the judges in these three cases who could relate their experience as trial judges in these cases.

Hydrofluosilicic Acid There are no chronic toxicity data on the predominant chemical, hydrofluosilicic acid and its sodium salt, used to fluoridate American communities. Newly published studies (19) indicate a link between use of these chemicals and elevated level of lead in children's blood and anti-social behavior. Material from the authors of these studies has been submitted by them independently.

We believe the authors of these papers and their critics should be called before a Select Committee to explain to you and the American people what these papers mean for continuation of the policy of fluoridation.

Changing Views on Efficacy and Risk In recent years, two prominent dental researchers who were leaders of the pro-fluoridation movement announced reversals of their former positions because they concluded that water fluoridation is not an effective means of reducing dental caries and that it poses serious risks to human health. The late Dr. John Colquhoun was Principal Dental Officer of Aukland, New Zealand, and he published his reasons for changing sides in 1997 (20). In 1999, Dr. Hardy Limeback, Head of Preventive Dentistry, University of Toronto, announced his change of views, then published a statement (21) dated April 2000. I am submitting a copy of Dr. Limeback's publications.

We believe that Dr. Limeback, along with fluoridation proponents who have not changed their minds, such as Drs. Ernest Newbrun and Herschel Horowitz, should be called before a Select Committee to testify on the reasons for their respective positions.

Thank you for you consideration, and I will be happy to take questions.

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THE LAW OF MUNICIPAL CORPORATIONS

THIRD EDITION

EUGENE McQUILLIN

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By the Publisher's Editorial Staff

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provided that a quorum is also present.[7]

IV. INITIATIVE AND REFERENDUM

§ 16:47 Generally

Research References

West's Key Number Digest, Municipal Corporations ⚷108, 108.5

Municipal legislation may be enacted for the most part only by the representative legislative body of a municipal corporation[1] or by exercise of the power of initiative or referendum, i.e., by direct vote of the electors.[2] The initiative and referendum are recognized as instruments of democratic government, widely used and of great value.[3] Where they are

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[7]**Pa.** Com. ex rel. Bagnoni v. Klemm, 499 Pa. 566, 454 A.2d 531 (1982).

[Section 16:47]

[1]**Colo.** Clark v. City of Aurora, 782 P.2d 771 (Colo. 1989).

Me. Sweetall v. Town of Blue Hill, 661 A.2d 159 (Me. 1995) (municipal officers declined to put referendum issue on state ballot).

Mich. Stadle v. Battle Creek Tp., 346 Mich. 64, 77 N.W.2d 329 (1956), quoting this treatise.

Tex. Holland v. Cranfill, 167 S.W. 308 (Tex. Civ. App. Dallas 1914).

Introduction and passage of ordinances, §§ 16:27 et seq.

[2]**Ark.** Tomlinson Bros. v. Hodges, 110 Ark. 528, 162 S.W. 64 (1913), citing this treatise.

Colo. Clark v. City of Aurora, 782 P.2d 771 (Colo. 1989); Board of County Com'rs of County of Archuleta v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Me. Sweetall v. Town of Blue Hill, 661 A.2d 159 (Me. 1995) (municipal officers declined to put referendum issue on state ballot).

Minn. St. Paul Citizens for Human Rights v. City Council of City of St. Paul, 289 N.W.2d 402, 20 Empl. Prac. Dec. (CCH) ¶ 30211 (Minn. 1979), citing this treatise.

Ohio. State ex rel. DeBrosse v. Cool, 87 Ohio St. 3d 1, 1999, 1999-Ohio-239, 716 N.E.2d 1114 (1999).

Pa. Municipality of Mt. Lebanon v. Erskine, 85 Pa. Commw. 490, 482 A.2d 1195 (1984).

Tex. Holland v. Cranfill, 167 S.W. 308 (Tex. Civ. App. Dallas 1914).

[3]**Cal.** Building Industry Assn. v. City of Camarillo, 41 Cal. 3d 810, 226 Cal. Rptr. 81, 718 P.2d 68 (1986); Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Colo. Clark v. City of Aurora, 782 P.2d 771 (Colo. 1989).

authorized for a municipal corporation, they are entitled to respect and should not be abridged by withdrawal from their processes of matter with which they are intended to deal.[4] The people's right to exercise the initiative power is a right that must be jealously defended by the courts.[5] Initiative and referendum provisions differ widely in their terminology.[6]

D.C. Stevenson v. District of Columbia Bd. of Elections & Ethics, 683 A.2d 1371 (D.C. 1996).

Me. LaFleur ex rel. Anderson v. Frost, 146 Me. 270, 80 A.2d 407 (1951) (history discussed).

Mo. State ex rel. Blackwell v. Travers, 600 S.W.2d 110 (Mo. Ct. App. E.D. 1980).

N.C. Purser v. Ledbetter, 227 N.C. 1, 40 S.E.2d 702 (1946).

Wash. Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

[4]**Cal.** Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994); Bayless v. Limber, 26 Cal. App. 3d 463, 102 Cal. Rptr. 647 (2d Dist. 1972).

Me. Sweetall v. Town of Blue Hill, 661 A.2d 159 (Me. 1995) (municipal officers declined to put referendum issue on state ballot).

Mich. Stadle v. Battle Creek Tp., 346 Mich. 64, 77 N.W.2d 329 (1956), quoting this treatise.

N.C. Purser v. Ledbetter, 227 N.C. 1, 40 S.E.2d 702 (1946).

Pa. Municipality of Mt. Lebanon v. Erskine, 85 Pa. Commw. 490, 482 A.2d 1195 (1984).

Wash. Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

[5]**Cal.** Building Industry Assn. v. City of Camarillo, 41 Cal. 3d 810, 226 Cal. Rptr. 81, 718 P.2d 68 (1986); DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995); Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995).

D.C. Stevenson v. District of Columbia Bd. of Elections & Ethics, 683 A.2d 1371 (D.C. 1996).

Me. Sweetall v. Town of Blue Hill, 661 A.2d 159 (Me. 1995) (municipal officers declined to put referendum issue on state ballot).

Ohio. State ex rel. Rose v. Lorain Cty. Bd. of Elections, 90 Ohio St. 3d 229, 2000, 2000-Ohio-65, 736 N.E.2d 886 (2000).

[6]**Ky.** Seaton v. Lackey, 298 Ky. 188, 182 S.W.2d 336 (1944).

Ohio. State ex rel. Rose v. Lorain Cty. Bd. of Elections, 90 Ohio St. 3d 229, 2000, 2000-Ohio-65, 736 N.E.2d 886 (2000); State ex rel. DeBrosse v. Cool, 87 Ohio St. 3d 1, 1999, 1999-Ohio-239, 716 N.E.2d 1114 (1999).

Pa. Municipality of Mt. Lebanon v. Erskine, 85 Pa. Commw. 490, 482 A.2d 1195 (1984).

The First Amendment provides that Congress shall make no law abridging the freedom of speech. Because state action includes city ordinances adopted under state authority, the First Amendment's prohibitions extend to local initiative and referendum procedures.[7] Petition circulation is core political speech, because it involves interactive communication concerning political change.[8] First Amendment protection for such activity is, therefore, very important.[9] Election-related legislation is subject to evaluation under strict scrutiny test.[10] Thus, under a strict scrutiny review standard, an ordinance which prohibited nonresidents from circulating initiative or referendum petitions in the city is unconstitutional under the First Amendment.[11]

In this subdivision, direct enactment or rejection of municipal legislation by the people of a city is treated fully except that the adoption of municipal legislation in special fields such as annexation of territory,[12] charter amendment,[13] or the incurring of indebtedness or issuance of bonds[14] is treated in connection with the particular matters to which they relate.[15]

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[7]**U.S.** Chandler v. City of Arvada, Colorado, 292 F.3d 1236 (10th Cir. 2002).

[8]**U.S.** Chandler v. City of Arvada, Colorado, 292 F.3d 1236 (10th Cir. 2002).

[9]**U.S.** Chandler v. City of Arvada, Colorado, 292 F.3d 1236 (10th Cir. 2002).

[10]**U.S.** Chandler v. City of Arvada, Colorado, 292 F.3d 1236 (10th Cir. 2002).

[11]**U.S.** Chandler v. City of Arvada, Colorado, 292 F.3d 1236 (10th Cir. 2002).

[12]**Cal.** Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Wash. Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

See Ch 7.

[13]**Wash.** Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

See §§ 9.24 et seq.

[14]See Ch 40.

[15]Municipal elections of officers or upon propositions generally, Ch 12.

Referendum on sale of municipal property, Ch 28.

Submitting franchise to vote of people, Ch 34.

§ 16:53 Measures submissible

Research References

West's Key Number Digest, Municipal Corporations ⇨108.2, 108.7, 108.8

Am. Jur. 2d, Initative and Referendum § 6

The power of initiative or referendum may be conferred by the sovereignty upon a municipality with respect to any matter, legislative or administrative, within the realm of local affairs;[1] and often the power, as conferred, is extensive, including all ordinances and resolutions and practically all

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(bond issue).

[Section 16:53]

[1]**Ariz.** Robertson v. Graziano, 189 Ariz. 350, 942 P.2d 1182 (Ct. App. Div. 1 1997) (amendment to charter).

Cal. DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995); Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 368, 889 P.2d 557 (1995) (exclusion of tax measures from referendum power not limiting power to repeal taxes by initiative); (zoning decisions); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Colo. Leach & Arnold Homes, Inc. v. City of Boulder, 32 Colo. App. 16, 507 P.2d 476 (1973) (home-rule city's authority to determine).

Fla. City of Coral Gables v. Carmichael, 256 So. 2d 404 (Fla. Dist. Ct. App. 3d Dist. 1972) (Fla App); Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965), quoting this treatise; Barnes v. City of Miami, 47 So. 2d 3 (Fla. 1950) (reh den), citing this treatise.

Minn. Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002) (state land use and zoning laws preempting charter provision allowing referendum).

Mo. State ex rel. Whittington v. Strahm, 366 S.W.2d 495 (Mo. Ct. App. 1963), transferred to Mo. S. Ct., 374 S.W.2d 127 (Mo. 1963), quoting this treatise.

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

N.J. Submission of referendum whether county should pursue all remedies to get legislature to repeal state tax was beyond county's power since the tax was beyond the realm of local affairs. New Jersey State AFL-CIO v. Bergen County Bd. of Chosen Freeholders, 121 N.J. 255, 579 A.2d 1231, 62 Ed. Law Rep. 1083 (1990).

There can be no submission of referendum regarding county's advice to state legislature on car insurance issue since that issue is outside realm of local affairs. Board of Chosen Freeholders of Mercer County v. Szaferman, 117 N.J. 94, 563 A.2d 1132 (1989).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

actions that might be taken by a municipal council.[2] The power, however, cannot be unlimited.[3] It is restricted to

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Wash. Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

Wis. Cf. State ex rel. Althouse v. City of Madison, 79 Wis. 2d 97, 255 N.W.2d 449 (1977) (only legislative, not executive or administrative).

Amendments or repeals of ordinances by initiative or referendum, Ch 21.

[2]**Ariz.** Saggio v. Connelly, 147 Ariz. 240, 709 P.2d 874 (1985) (consideration of whether initiative defective in form).

Cal. Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995) (exclusion of tax measures from referendum power not limiting power to repeal taxes by initiative); Bayless v. Limber, 26 Cal. App. 3d 463, 102 Cal. Rptr. 647 (2d Dist. 1972).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965), quoting this treatise.

La. Dickson v. Hardy, 177 La. 447, 148 So. 674 (1933).

Mich. McKinley v. City of Fraser, 366 Mich. 104, 114 N.W.2d 341 (1962).

Mo. State ex rel. Ford v. Brawley, 514 S.W.2d 97 (Mo. Ct. App. 1974) (all actions except emergency ordinances, taxes or special tax bills.

Ohio. State ex rel. Poor v. Addison, 132 Ohio St. 477, 8 Ohio Op. 459, 9 N.E.2d 148 (1937); Sauder v. City of Akron, 58 Ohio L. Abs. 102, 94 N.E.2d 403 (C.P. 1950), quoting this treatise.

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

S.D. Byre v. City of Chamberlain, 362 N.W.2d 69 (S.D. 1985) (initiative power as extending to all types of legislation).

W.Va. State ex rel. Gabbert v. MacQueen, 82 W. Va. 44, 95 S.E. 666 (1918).

Wis. Meade v. Dane County, 155 Wis. 632, 145 N.W. 239 (1914).

[3]**Alaska.** Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994).

Ark. Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

Cal. DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995); Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995) (exclusion of tax measures from referendum power not limiting power to repeal taxes by initiative); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965), quoting this treatise.

Minn. Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis, 293 Minn. 227, 198 N.W.2d 531 (1972) (power does not

legislation within the power of the municipality to enact or adopt.[4] A limitation of the power by general law may either

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extend to "any action").

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

N.J. Cuprowski v. City of Jersey City, 101 N.J. Super. 15, 242 A.2d 873 (Law Div. 1968), aff'd, 103 N.J. Super. 217, 247 A.2d 28 (App. Div. 1968), citing this treatise.

Ohio. Where the state constitution grants to municipalities the authority "to exercise all powers of local self-government," the people of the municipality have a limited right to approve or reject, by referendum, any legislative action of a city council, but not administrative acts, such as the execution of an existing law. Buckeye Community Hope Found. v. Cuyahoga Falls, 82 Ohio St. 3d 539, 697 N.E.2d 181 (1998) (holding that city council action was administrative action not subject to municipal referendum power).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Wis. Meade v. Dane County, 155 Wis. 632, 145 N.W. 239 (1914); Prechel v. City of Monroe, 40 Wis. 2d 231, 161 N.W.2d 373 (1968) (necessity of express grant).

[4]**Alaska.** Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994) (term limits not subject to initiative).

Ariz. Robertson v. Graziano, 189 Ariz. 350, 942 P.2d 1182 (Ct. App. Div. 1 1997).

Ark. Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

Cal. Associated Home Builders etc., Inc. v. City of Livermore, 18 Cal. 3d 582, 135 Cal. Rptr. 41, 557 P.2d 473, 7 Envtl. L. Rep. 20155, 92 A.L.R.3d 1038 (1976); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994); Hughes v. City of Lincoln, 232 Cal. App. 2d 741, 43 Cal. Rptr. 306 (3d Dist. 1965); Alexander v. Mitchell, 119 Cal. App. 2d 816, 260 P.2d 261 (1st Dist. 1953).

Colo. Greeley Police Union v. City Council of Greeley, 191 Colo. 419, 553 P.2d 790, 93 L.R.R.M. (BNA) 2382, 79 Lab. Cas. (CCH) ¶ 53873 (1976).

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

Neb. State ex rel. Andersen v. Leahy, 189 Neb. 92, 199 N.W.2d 713 (1972) (initiative).

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

N.Y. Where a statute provided that a city had power to sell, lease, exchange, donate or otherwise dispose of land to the United States for use as a military reservation notwithstanding the provisions of any charter or any other statute, a referendum seeking to limit that power was properly removed from the ballot. Fossella v. Dinkins, 66 N.Y.2d 162, 495 N.Y.S.2d

be express or arise by implication, but the limitation will not be implied unless the limiting provisions are clear or compelling.[5] At least, the power extends to all matters of local concern other than those excluded by express or necessarily implied exceptions contained in charter, statutory, or constitutional provisions.[6] The generality of the phrase "any

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352, 485 N.E.2d 1017 (1985).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

S.D. Heine Farms v. Yankton County ex rel. County Com'rs, 2002 SD 88, 649 N.W.2d 597 (S.D. 2002); Christensen v. Carson, 533 N.W.2d 712 (S.D. 1995); Custer City v. Robinson, 79 S.D. 91, 108 N.W.2d 211 (1961).

Utah. Dewey v. Doxey-Layton Realty Co., 3 Utah 2d 1, 277 P.2d 805 (1954).

City recorder lacked authority to make independent determination of appropriateness of subject matter of initiative petition where the recorder may be the subject matter of the petition. Taylor v. South Jordan City Recorder, 972 P.2d 423 (Utah 1998).

Wash. Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994); Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980).

Wis. State ex rel. Althouse v. City of Madison, 79 Wis. 2d 97, 255 N.W.2d 449 (1977).

Reasonableness required of initiative and referendum measures, § 18:3.

[5]**Tex.** Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645 (1951).

[6]**Minn.** Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002) (state land use and zoning laws preempting charter provision allowing referendum).

Cal. Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995) (exclusion of tax measures from referendum power not limiting power to repeal taxes by initiative); Bruce v. City of Alameda, 166 Cal. App. 3d 18, 212 Cal. Rptr. 304 (1st Dist. 1985).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965), quoting this treatise.

N.Y. Adams v. Cuevas, 133 Misc. 2d 63, 506 N.Y.S.2d 614 (Sup 1986), judgment aff'd, 123 A.D.2d 526, 506 N.Y.S.2d 501 (1st Dep't 1986), order aff'd, 68 N.Y.2d 188, 507 N.Y.S.2d 848, 499 N.E.2d 1246 (1986) (initiative not proper where not directly related to any provision in charter); Meredith v. Monahan, 60 Misc. 2d 1081, 304 N.Y.S.2d 638 (Sup 1969) (advisory ordinances); Silberman v. Katz, 54 Misc. 2d 956, 283 N.Y.S.2d 895 (Sup 1967), judgment aff'd, 28 A.D.2d 992, 284 N.Y.S.2d 836 (1st Dep't 1967) (advisory resolution).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

proposed ordinance" in an initiative and referendum statute does not make it void for uncertainty.[7]

A constitutional exception from the referendum process does not apply to the initiative process.[8]

On the other hand, the power of initiative and referendum often is more or less restricted.[9] An ordinance is not subject

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S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Tex. City of Hitchcock v. Longmire, 572 S.W.2d 122 (Tex. Civ. App. Houston 1st Dist. 1978), writ refused n.r.e., (Jan. 10, 1979) (repeal of annexation ordinance); Edwards v. Murphy, 256 S.W.2d 470 (Tex. Civ. App. Fort Worth 1953), writ dismissed.

[7]Ala. Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

Alaska. Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994).

Cal. Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995) (exclusion of tax measures from referendum power not limiting power to repeal taxes by initiative).

Power of initiative did not necessarily extend to council decisions regarding compensation of county employees. Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965), quoting this treatise.

[8]S.D. Christensen v. Carson, 533 N.W.2d 712 (S.D. 1995).

[9]Ariz. Robertson v. Graziano, 189 Ariz. 350, 942 P.2d 1182 (Ct. App. Div. 1 1997).

Ark. Tomlinson Bros. v. Hodges, 110 Ark. 528, 162 S.W. 64 (1913) (power not extended to other than "general county and municipal business").

Mich. Harter v. City of Swartz Creek, 68 Mich. App. 403, 242 N.W.2d 792 (1976).

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

N.Y. Lynch v. O'Leary, 166 Misc. 567, 2 N.Y.S.2d 588 (Sup 1938) (confining initiative right to ordinances, not extended to local laws).

Ohio. James v. Ketterer, 125 Ohio St. 165, 11 Ohio L. Abs. 510, 180 N.E. 704 (1932) (ordinances only, not resolutions); Storegard v. Board of Elections of Cuyahoga County, 22 Ohio Misc. 5, 50 Ohio Op. 2d 228, 51 Ohio Op. 2d 28, 255 N.E.2d 880 (C.P. 1969) (referendum restricted, initiative not).

Where the state constitution grants to municipalities the authority "to exercise all powers of local self-government," the people of the municipality have a limited right to approve or reject, by referendum, any

to referendum if its enactment is mandatory.[10] Generally, ordinances or measures that are unconstitutional or void or beyond the power or authority of a municipality to enact, are not subject to initiative or referendum.[11] Furthermore,

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legislative action of a city council, but not administrative acts, such as the execution of an existing law. Buckeye Community Hope Found. v. Cuyahoga Falls, 82 Ohio St. 3d 539, 697 N.E.2d 181 (1998) (holding that city council action was administrative action not subject to municipal referendum power).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

S.D. Heine Farms v. Yankton County ex rel. County Com'rs, 2002 SD 88, 649 N.W.2d 597 (S.D. 2002).

Wash. Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

[10]**Ill.** People ex rel. Schlaeger v. Illinois Cent. R. Co., 396 Ill. 200, 71 N.E.2d 39 (1947) (appropriation ordinance).

Mich. Stolorow v. City of Pontiac, 339 Mich. 199, 63 N.W.2d 611 (1954) (appropriation ordinance).

Appropriation ordinances, Ch 39.

[11]**U.S.** Where voters enacted limit on school busing, court held that the measure was based on race and hence subject to strict scrutiny. Washington v. Seattle School Dist. No. 1, 458 U.S. 457, 102 S. Ct. 3187, 73 L. Ed. 2d 896, 5 Ed. Law Rep. 58 (1982).

A 60% vote requirement did not deprive anyone of fundamental right to vote. Gordon v. Lance, 403 U.S. 1, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971).

Court struck down voter adopted amendment to city charter forbidding the city from enacting any race-based prohibition against housing discrimination without prior authorization of voters on the ground that race was a suspect classification and the measure did not pass strict scrutiny. Hunter v. Erickson, 393 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969).

Alaska. Constitution does not permit statutory limit on terms served by legislators and term limits cannot be enacted by initiative. Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994).

Cal. Myers v. Stringham, 195 Cal. 672, 235 P. 448 (1925); Kugler v. Yocum, 69 Cal. 2d 371, 71 Cal. Rptr. 687, 445 P.2d 303 (1968) (matter of city salaries must be presented to the voters pursuant to a valid referendum petition); Blotter v. Farrell, 42 Cal. 2d 804, 270 P.2d 481 (1954).

Colo. Where voters passed an initiative curbing the legislature's ability to enact or retain antidiscrimination laws targeted at protecting gays, the court held that the measure interfered with the fundamental right of gays to participate in the political process and therefore the measure was subject to strict scrutiny. Evans v. Romer, 882 P.2d 1335, 95 Ed. Law Rep.

despite enabling legislation allowing initiative and referendum as a method of enactment of "any proposed ordinance," such provision has been construed not to permit enactment by this procedure where the subject matter makes the process inapplicable,[12] as where it would have the effect of disrupting a need for coordinated regional action[13] where it would displace a legislatively sanctioned mechanism for lo-

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392, 67 Fair Empl. Prac. Cas. (BNA) 1541, 65 Empl. Prac. Dec. (CCH) ¶ 43289 (Colo. 1994), judgment aff'd, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539, 70 Fair Empl. Prac. Cas. (BNA) 1180, 68 Empl. Prac. Dec. (CCH) ¶ 44013 (1996).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965), quoting this treatise.

Ill. People v. Gould, 345 Ill. 288, 178 N.E. 133 (1931).

Ky. Beierle v. City of Newport, 305 Ky. 477, 204 S.W.2d 806 (1947).

Nev. State v. White, 36 Nev. 334, 136 P. 110 (1913).

N.J. Lynch v. Town of West New York, 115 N.J. Super. 1, 277 A.2d 891 (App. Div. 1971); Santoro v. Mayor and Council of Borough of South Plainfield, 57 N.J. Super. 498, 155 A.2d 23 (App. Div. 1959).

N.Y. Fossella v. Dinkins, 66 N.Y.2d 162, 495 N.Y.S.2d 352, 485 N.E.2d 1017 (1985) (charter amendment to prohibit sale of land to federal government for military installations); City of Buffalo v. Rochford, 277 A.D. 1018, 99 N.Y.S.2d 946 (4th Dep't 1950); Olin v. Town of North Hempstead, 34 Misc. 2d 853, 231 N.Y.S.2d 286 (Sup 1962), judgment aff'd, 18 A.D.2d 831, 237 N.Y.S.2d 991 (2d Dep't 1963), judgment aff'd, 13 N.Y.2d 782, 242 N.Y.S.2d 216, 192 N.E.2d 172 (1963).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

S.D. Heine Farms v. Yankton County ex rel. County Com'rs, 2002 SD 88, 649 N.W.2d 597 (S.D. 2002).

Wash. Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980).

Requirement that proposed measure be of nature legislative body has power to pass, § 16:68.

[12]**N.J.** Concerned Citizens of Borough of Wildwood Crest v. Pantalone, 185 N.J. Super. 37, 447 A.2d 200 (App. Div. 1982).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

[13]**N.J.** In re Certain Petitions for a Binding Referendum, Filed Pursuant to N.J.S.A. 40:74-1 et seq., 154 N.J. Super. 482, 381 A.2d 1217 (App. Div. 1977) (amendments to comprehensive traffic ordinance); Tumpson v. Farina, 120 N.J. 55, 575 A.2d 1368 (1990) (ordinance authorizing "a public alliance" between city and other regional agencies as proper subject for referendum).

cal action.[14] However, where prior to enactment the constitutionality of an ordinance may not be questioned by either the city council or the courts, the matter must be submitted to the voters for their consideration.[15] Courts may consider the validity of proposed legislation in cases where the proposed referendum sought to be removed from the ballot is in direct conflict with a state statute.[16] Similarly, courts have jurisdiction and authority to determine whether the proposed initiative or referendum measure is of the type authorized to be placed on the ballot.[17] The power of initiative and referendum may extend to a declaration of policy beyond the power of the municipality to effectuate,[18] although there is authority to the contrary.[19]

The initiative and referendum power cannot be used in

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[14]**Minn.** Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002) (state land use and zoning laws preempting charter provision allowing referendum).

N.J. Smith v. Livingston Tp., 106 N.J. Super. 444, 256 A.2d 85 (Ch. Div. 1969), judgment aff'd, 54 N.J. 525, 257 A.2d 698 (1969) (zoning ordinance amendments).

[15]**Tex.** Green v. City of Lubbock, 627 S.W.2d 868 (Tex. App. Amarillo 1981), writ refused n.r.e., (June 9, 1982).

Wis. State ex rel. Althouse v. City of Madison, 79 Wis. 2d 97, 255 N.W.2d 449 (1977).

When court will pass on constitutionality, § 19:4.

[16]**Ark.** Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

N.Y. Fossella v. Dinkins, 66 N.Y.2d 162, 495 N.Y.S.2d 352, 485 N.E.2d 1017 (1985) (disposition of city property for federal military installation).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

[17]**Ark.** Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990) (state constitution limiting referendum and initiative to "municipal legislation").

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

[18]**Cal.** Farley v. Healey, 67 Cal. 2d 325, 62 Cal. Rptr. 26, 431 P.2d 650 (1967) (cease fire and withdrawal of troops from Vietnam).

[19]**Ohio.** State ex rel. Rhodes v. Board of Elections of Lake County, 12 Ohio St. 2d 4, 41 Ohio Op. 2d 2, 230 N.E.2d 347 (1967) (resolution that American troops be brought home from Vietnam).

S.C. Town of Hilton Head Island v. Coalition of Expressway Op-

areas in which the local legislative body's discretion has been clearly preempted by statutory mandate.[20] An intent to exclude ballot measures is more readily inferred if the statute addresses a matter of statewide concern rather than a purely municipal affair.[21] However, state regulation of a matter does not necessarily preempt the power of local voters to act through the initiative or referendum.[22] Courts must inquire into the nature of the state's regulatory interests to determine if they are fundamentally incompatible with the exercise of the right of initiative or referendum, or otherwise reveal a legislative intent to exclusively delegate authority to the local governing body.[23]

Under governing constitutional, statutory, or charter provisions it sometimes is possible for a section or part of an ordinance, as distinguished from the whole, to be subject to referendum.[24]

A statute extending the power of initiative and referendum to "ordinances or other measures" includes charter amendments.[25] Under a particular charter provision, initiative and referendum may extend only to council legislation

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ponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

[20]**Cal.** DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995) (general land use planning law not preempting local discretion to amend plan by initiative).

Minn. Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002) (state land use and zoning laws preempting charter provision allowing referendum).

[21]**Cal.** Committee of Seven Thousand v. Superior Court, 45 Cal. 3d 491, 247 Cal. Rptr. 362, 754 P.2d 708 (1988); DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995).

Minn. Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002) (state land use and zoning laws preempting charter provision allowing referendum).

[22]**Cal.** DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995) (general land use planning law not preempting local discretion to amend plan by initiative).

[23]**Cal.** DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995) (general land use planning law not preempting local discretion to amend plan by initiative).

Minn. Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002).

[24]**Cal.** Dye v. Council of City of Compton, 80 Cal. App. 2d 486, 182 P.2d 623 (2d Dist. 1947).

[25]**Colo.** Witcher v. Canon City, 716 P.2d 445 (Colo. 1986), citing this

and not to repeal of a charter.[26] Likewise, an initiative directing a borough to choose one of three apportionment plans and filed with a borough which later united with a city under one municipal government was not binding on the subsequently created municipality as an attempt to amend the municipality's charter.[27]

The existence of procedural requirements for the adoption of local ordinances generally does not imply a restriction of the power of initiative or referendum.[28]

§ 16:54 Measures submissible—Legislative or administrative measures

Research References

West's Key Number Digest, Municipal Corporations ⇐108.7 to 108.9

Am. Jur. 2d, Initative and Referendum §§ 7, 8

The power of initiative or referendum usually is restricted to legislative ordinances, resolutions, or measures,[1] and is

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treatise.

Mo. See State ex rel. Card v. Kaufman, 517 S.W.2d 78 (Mo. 1974) (fund appropriation).

Ohio. State ex rel. Poor v. Addison, 132 Ohio St. 477, 8 Ohio Op. 459, 9 N.E.2d 148 (1937).

Direct amendment and adoption of charters, §§ 9.25 et seq.

[26]**Okla.** Wyatt v. Clark, 1956 OK 210, 299 P.2d 799 (Okla. 1956); Caruth v. State, 1923 OK 980, 101 Okla. 93, 223 P. 186 (1923).

[27]**Ala.** Municipality of Anchorage v. Frohne, 568 P.2d 3 (Alaska 1977).

[28]**Cal.** DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995) (procedural requirements in land planning law not limiting right to amend general plan by initiative).

[Section 16:54]

[1]**U.S.** Perkins v. City of Chicago Heights, 47 F.3d 212 (7th Cir. 1995).

Ala. Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

Ariz. Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998); Robertson v. Graziano, 189 Ariz. 350, 942 P.2d 1182 (Ct. App. Div. 1 1997); Wennerstrom v. City of Mesa, 169 Ariz. 485, 821 P.2d 146 (1991), citing this treatise; Saggio v. Connelly, 147 Ariz. 240, 709 P.2d 874 (1985) (initiative petition to disincorporate city properly rejected as not calling for legislative action).

Ark. Greenlee v. Munn, 262 Ark. 663, 559 S.W.2d 928 (1978); Scroggins v. Kerr, 217 Ark. 137, 228 S.W.2d 995 (1950); Southern Cities

Distributing Co. v. Carter, 44 S.W.2d 362 (Ark. 1931).

Cal. Yost v. Thomas, 36 Cal. 3d 561, 205 Cal. Rptr. 801, 685 P.2d 1152 (1984); DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994); W. W. Dean & Associates v. City of South San Francisco, 190 Cal. App. 3d 1368, 236 Cal. Rptr. 11 (1st Dist. 1987).

Colo. City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977); City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987), citing this treatise; People v. Graham, 70 Colo. 509, 203 P. 277 (1921).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Ill. People v. City of Centralia, 1 Ill. App. 2d 228, 117 N.E.2d 410 (4th Dist. 1953).

Kan. City of Wichita v. Kansas Taxpayers Network, Inc., 255 Kan. 534, 874 P.2d 667 (1994); Rauh v. City of Hutchinson, 223 Kan. 514, 575 P.2d 517 (1978); State ex rel. Frank v. Salome, 167 Kan. 766, 208 P.2d 198 (1949), citing this treatise.

Ky. Katter, Inc. v. Brockman, 349 S.W.2d 838 (Ky. 1961); City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960); Vanmeter v. City of Paris, 273 S.W.2d 49 (Ky. 1954); Seaton v. Lackey, 298 Ky. 188, 182 S.W.2d 336 (1944).

Mass. McCartin v. School Committee of Lowell, 322 Mass. 624, 79 N.E.2d 192 (1948); Dooling v. City Council of City of Fitchburg, 242 Mass. 599, 136 N.E. 616 (1922).

Mich. West v. City of Portage, 392 Mich. 458, 221 N.W.2d 303, 72 A.L.R.3d 1016 (1974).

Mo. State ex rel. Hickman v. City Council of Kirksville, 690 S.W.2d 799 (Mo. Ct. App. W.D. 1985); Carson v. Oxenhandler, 334 S.W.2d 394 (Mo. Ct. App. 1960).

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

Neb. Read v. City of Scottsbluff, 139 Neb. 418, 297 N.W. 669 (1941).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.J. Menendez v. City of Union City, 211 N.J. Super. 169, 511 A.2d 676 (App. Div. 1986) (increasing number of fire captains and creating position of fire protection subcode official).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

N.Y. Mayor of City of New York v. Council of City of New York, 280 A.D.2d 380, 721 N.Y.S.2d 39 (1st Dep't 2001).

Ohio. Myers v. Schiering, 27 Ohio St. 2d 11, 56 Ohio Op. 2d 6, 271 N.E.2d 864 (1971); State ex rel. DeBrosse v. Cool, 87 Ohio St. 3d 1, 1999, 1999-Ohio-239, 716 N.E.2d 1114 (1999).

not extended to executive[2] or administrative action,[3] although

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Okla. Fite v. Lacey, 1984 OK 83, 691 P.2d 901, 120 L.R.R.M. (BNA) 3017 (Okla. 1984); Hughes v. Bryan, 1967 OK 57, 425 P.2d 952 (Okla. 1967); State ex rel. Hunzicker v. Pulliam, 1934 OK 371, 168 Okla. 632, 37 P.2d 417, 96 A.L.R. 1294 (1934).

Or. Tillamook Peoples' Utility Dist. v. Coates, 174 Or. 476, 149 P.2d 558 (1944), quoting this treatise; Whitbeck v. Funk, 140 Or. 70, 12 P.2d 1019 (1932); Amalgamated Transit Union-Division 757 v. Yerkovich, 24 Or. App. 221, 545 P.2d 1401 (1976).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

S.D. Kirschenman v. Hutchinson County Bd. of Com'rs, 2003 SD 4, 656 N.W.2d 330 (S.D. 2003); City of Mission v. Abourezk, 318 N.W.2d 124 (S.D. 1982).

Tenn. Bean v. City of Knoxville, 180 Tenn. 448, 175 S.W.2d 954 (1943).

Tex. Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645 (1951), citing this treatise; Green v. City of Lubbock, 627 S.W.2d 868 (Tex. App. Amarillo 1981), writ refused n.r.e., (June 9, 1982).

Utah. Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153 (Utah 2002); Keigley v. Bench, 97 Utah 69, 89 P.2d 480, 122 A.L.R. 756 (1939); Bird v. Sorenson, 16 Utah 2d 1, 394 P.2d 808 (1964).

Va. Whitehead v. H & C Development Corp., 204 Va. 144, 129 S.E.2d 691 (1963), citing this treatise.

Wash. Neils v. City of Seattle, 185 Wash. 269, 53 P.2d 848 (1936); Citizens for Financially Responsible Government v. City of Spokane, 99 Wash. 2d 339, 662 P.2d 845 (1983); Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

W.Va. Bachmann v. Goodwin, 121 W. Va. 303, 3 S.E.2d 532 (1939).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967).

Classification of powers as executive and legislative, Ch 10.

[2]**Ariz.** Wennerstrom v. City of Mesa, 169 Ariz. 485, 821 P.2d 146 (1991), citing this treatise.

Cal. Bagley v. City of Manhattan Beach, 18 Cal. 3d 22, 132 Cal. Rptr. 668, 553 P.2d 1140, 93 L.R.R.M. (BNA) 2435, 79 Lab. Cas. (CCH) ¶ 53874 (1976); Hughes v. City of Lincoln, 232 Cal. App. 2d 741, 43 Cal. Rptr. 306 (3d Dist. 1965).

Kan. City of Wichita v. Kansas Taxpayers Network, Inc., 255 Kan. 534, 874 P.2d 667 (1994); Lewis v. City of South Hutchinson, 162 Kan. 104, 174 P.2d 51 (1946).

Ky. Seaton v. Lackey, 298 Ky. 188, 182 S.W.2d 336 (1944).

Va. Whitehead v. H & C Development Corp., 204 Va. 144, 129 S.E.2d 691 (1963), citing this treatise.

Wash. Neils v. City of Seattle, 185 Wash. 269, 53 P.2d 848 (1936).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed).

[3]**Ariz.** Wennerstrom v. City of Mesa, 169 Ariz. 485, 821 P.2d 146 (1991), citing this treatise.

Ark. Greenlee v. Munn, 262 Ark. 663, 559 S.W.2d 928 (1978); Carpenter v. City of Paragould, 198 Ark. 454, 128 S.W.2d 980 (1939).

Cal. Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994); Mueller v. Brown, 221 Cal. App. 2d 319, 34 Cal. Rptr. 474 (5th Dist. 1963); W. W. Dean & Associates v. City of South San Francisco, 190 Cal. App. 3d 1368, 236 Cal. Rptr. 11 (1st Dist. 1987).

Colo. City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977); City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987), citing this treatise.

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Iowa. Murphy v. Gilman, 204 Iowa 58, 214 N.W. 679 (1927).

Kan. City of Wichita v. Kansas Taxpayers Network, Inc., 255 Kan. 534, 874 P.2d 667 (1994); Rauh v. City of Hutchinson, 223 Kan. 514, 575 P.2d 517 (1978); State ex rel. Frank v. Salome, 167 Kan. 766, 208 P.2d 198 (1949), citing this treatise.

Ky. Seaton v. Lackey, 298 Ky. 188, 182 S.W.2d 336 (1944); Katter, Inc. v. Brockman, 349 S.W.2d 838 (Ky. 1961); City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960); Vanmeter v. City of Paris, 273 S.W.2d 49 (Ky. 1954).

Mich. Beach v. City of Saline, 101 Mich. App. 795, 300 N.W.2d 698 (1980), aff'd in part, appeal denied in part, 412 Mich. 729, 316 N.W.2d 724 (1982) (purchase of land administrative action).

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998); City of Billings v. Nore, 148 Mont. 96, 417 P.2d 458 (1966).

Neb. State ex rel. Ballantyne v. Leeman, 149 Neb. 847, 32 N.W.2d 918 (1948); Schroeder v. Zehrung, 108 Neb. 573, 188 N.W. 237 (1922).

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

N.J. Cuprowski v. City of Jersey City, 101 N.J. Super. 15, 242 A.2d 873 (Law Div. 1968), aff'd, 103 N.J. Super. 217, 247 A.2d 28 (App. Div. 1968) (resolution or ordinance).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Ohio. Myers v. Schiering, 27 Ohio St. 2d 11, 56 Ohio Op. 2d 6, 271 N.E.2d 864 (1971) (approval of sanitary landfill); State ex rel. Barberis v. City of Bay Village, 31 Ohio Misc. 203, 59 Ohio Op. 2d 366, 60 Ohio Op.

a city charter may dispense with this distinction.[4] It may be required by statute that any ordinance which would constitute a change in the "form of government" be approved by referendum.[5] It has been said, however, that if the subject is

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2d 382, 281 N.E.2d 209 (C.P. 1971) (nonchartered municipalities).

Okla. In re Supreme Court Adjudication of Sufficiency of Initiative Petition in Tulsa, Concerning a One Cent Sales Tax Increase for Funding Additional Police Personnel and Compensation, 1979 OK 103, 597 P.2d 1208 (Okla. 1979); In re Referendum Petition No. 1968-1 of City of Norman, 1970 OK 143, 475 P.2d 381, 2 Empl. Prac. Dec. (CCH) ¶ 10263 (Okla. 1970); Hughes v. Bryan, 1967 OK 57, 425 P.2d 952 (Okla. 1967); State ex rel. Hunzicker v. Pulliam, 1934 OK 371, 168 Okla. 632, 37 P.2d 417, 96 A.L.R. 1294 (1934).

Or. Lane Transit Dist. v. Lane County, 327 Or. 161, 957 P.2d 1217 (1998); Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990) (proposed initiative for renaming of street as administrative activity not subject to initiative and referendum process); Whitbeck v. Funk, 140 Or. 70, 12 P.2d 1019 (1932); Monahan v. Funk, 137 Or. 580, 3 P.2d 778 (1931), quoting this treatise.

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Tex. White Top Cab Co. v. City of Houston, 440 S.W.2d 732 (Tex. Civ. App. Houston 14th Dist. 1969).

Utah. Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153 (Utah 2002); Bird v. Sorenson, 16 Utah 2d 1, 394 P.2d 808 (1964); Shriver v. Bench, 6 Utah 2d 329, 313 P.2d 475 (1957).

Va. Whitehead v. H & C Development Corp., 204 Va. 144, 129 S.E.2d 691 (1963), citing this treatise.

Wash. Heider v. City of Seattle, 100 Wash. 2d 874, 675 P.2d 597 (1984); Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed); State v. Common Council of City of Milwaukee, 101 Wis 2d 680, 305 NW2d 178 (removal of police chief); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967), quoting this treatise.

[4]**Ohio.** State ex rel. Barberis v. City of Bay Village, 31 Ohio Misc. 203, 59 Ohio Op. 2d 366, 60 Ohio Op. 2d 382, 281 N.E.2d 209 (C.P. 1971) (people's right to reserve power in charter).

W.Va. State ex rel. Schreyer v. City of Wheeling, 146 W. Va. 467, 120 S.E.2d 389 (1961).

[5]**Ill.** Dunne v. Cook County, 164 Ill. App. 3d 929, 115 Ill. Dec. 855, 518 N.E.2d 380 (1st Dist. 1987).

N.Y. Mayor of City of New York v. Council of City of New York, 280 A.D.2d 380, 721 N.Y.S.2d 39 (1st Dep't 2001) (local law permitting city council to designate two persons for mayor's appointment to the police

one of statewide concern in which the legislature has delegated decision-making power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an "administrative" characterization, hence is outside the scope of the initiative and referendum.[6] Likewise, where a local governing body implements federal policy pursuant to a comprehensive plan of federal regulations governing matters of national concern, its actions are administrative and not subject to local referendum.[7] In essence, if the proposed initiative would put into execution previously declared policies or laws, it is administrative in

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investigatory board was invalid without a voter referendum).

[6]**Cal.** Yost v. Thomas, 36 Cal. 3d 561, 205 Cal. Rptr. 801, 685 P.2d 1152 (1984) (amendments to land use plan under Coastal Act not administrative); Bagley v. City of Manhattan Beach, 18 Cal. 3d 22, 132 Cal. Rptr. 668, 553 P.2d 1140, 93 L.R.R.M. (BNA) 2435, 79 Lab. Cas. (CCH) ¶ 53874 (1976); W. W. Dean & Associates v. City of South San Francisco, 190 Cal. App. 3d 1368, 236 Cal. Rptr. 11 (1st Dist. 1987).

Kan. City of Wichita v. Kansas Taxpayers Network, Inc., 255 Kan. 534, 874 P.2d 667 (1994), citing this treatise.

Mich. West v. City of Portage, 392 Mich. 458, 221 N.W.2d 303, 72 A.L.R.3d 1016 (1974) (amendment to comprehensive zoning ordinance by referendum).

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

N.J. Millennium Towers Urban Renewal Ltd. Liability Co. v. Municipal Council of City of Jersey City, 343 N.J. Super. 367, 778 A.2d 598 (Law Div. 2001).

When a municipal governing body is merely complying with and putting into execution a state or local legislative mandate in adopting an ordinance, in effect exercising a ministerial function, its enactment is administrative and not subject to referendum. Menendez v. City of Union City, 211 N.J. Super. 169, 511 A.2d 676 (App. Div. 1986).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Wash. Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980).

[7]**Cal.** W. W. Dean & Associates v. City of South San Francisco, 190 Cal. App. 3d 1368, 236 Cal. Rptr. 11 (1st Dist. 1987) (amendment plan pursuant to Endangered Species Act).

Wash. Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

nature.[8]

This does not mean that in every instance state regulation necessarily preempts the power of voters to act through initiative or referendum.[9] For example, a governmental code requiring cities and counties to balance housing needs against public service needs before passing a growth control ordinance has been deemed not applicable to growth control ordinances enacted by means of the initiative process.[10] The question is whether the legislature intended to preempt local authority and thereby preempt the power of the voters to act.[11] Where discretion is left to the local government as to what it may do, when the local government acts, it acts legislatively and its actions are subject to the normal referendum procedure.[12] The courts have noted that the constitutional provisions conferring the initiative and referendum are placed within the article defining and delegating the state's legislative powers, and have taken cognizance of the ways in which the conduct of government would be seriously hampered were the initiative and referendum to be used to compel or bar "administrative" acts

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[8]**Nev.** Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Wash. Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

[9]**Cal.** Yost v. Thomas, 36 Cal. 3d 561, 205 Cal. Rptr. 801, 685 P.2d 1152 (1984).

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

[10]**Cal.** Committee of Seven Thousand v. Superior Court, 45 Cal. 3d 491, 247 Cal. Rptr. 362, 754 P.2d 708 (1988) (statute giving exclusive authority to city councils not permitting initiative); Building Industry Assn. v. City of Camarillo, 41 Cal. 3d 810, 226 Cal. Rptr. 81, 718 P.2d 68 (1986).

[11]**Cal.** Yost v. Thomas, 36 Cal. 3d 561, 205 Cal. Rptr. 801, 685 P.2d 1152 (1984).

[12]**Cal.** Yost v. Thomas, 36 Cal. 3d 561, 205 Cal. Rptr. 801, 685 P.2d 1152 (1984).

N.J. Menendez v. City of Union City, 211 N.J. Super. 169, 511 A.2d 676 (App. Div. 1986) (even though authority to legislate delegated by state law).

S.D. Wang v. Patterson, 469 N.W.2d 577 (S.D. 1991).

by elected officials.[13]

Actions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative.[14] In this connection an

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[13]**Colo.** Witcher v. Canon City, 716 P.2d 445 (Colo. 1986), citing this treatise.

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990) (proposed initiative for renaming of street as administrative activity not subject to initiative and referendum process); Amalgamated Transit Union-Division 757 v. Yerkovich, 24 Or. App. 221, 545 P.2d 1401 (1976).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Wash. Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed).

[14]**Ariz.** Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998).

Cal. Arnel Development Co. v. City of Costa Mesa, 98 Cal. App. 3d 567, 159 Cal. Rptr. 592 (4th Dist. 1979), opinion vacated, 28 Cal. 3d 511, 169 Cal. Rptr. 904, 620 P.2d 565 (1980) (rezoning ordinance adjudicatory).

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987); Witcher v. Canon City, 716 P.2d 445 (Colo. 1986), citing this treatise (3rd Ed).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Kan. State ex rel. Frank v. Salome, 167 Kan. 766, 208 P.2d 198 (1949).

Mo. State ex rel. Whittington v. Strahm, 374 S.W.2d 127 (Mo. 1963) (water fluoridation as new and permanent municipal policy), citing this treatise; Anderson v. Smith, 377 S.W.2d 554 (Mo. Ct. App. 1964), quoting this treatise.

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

N.J. Cuprowski v. City of Jersey City, 101 N.J. Super. 15, 242 A.2d 873 (Law Div. 1968), aff'd, 103 N.J. Super. 217, 247 A.2d 28 (App. Div. 1968), quoting this treatise.

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996) (utility rates as administrative).

Okla. Fite v. Lacey, 1984 OK 83, 691 P.2d 901, 120 L.R.R.M. (BNA) 3017 (Okla. 1984), quoting this treatise.

Or. Monahan v. Funk, 137 Or. 580, 3 P.2d 778 (1931), quoting this treatise.

Tex. City of Austin v. Findlay, 538 S.W.2d 9 (Tex. Civ. App. Austin 1976), quoting this treatise.

ordinance which shows an intent to form a permanent rule of government until repealed is one of permanent operation.[15] Obviously, details which are essentially of a fluctuating sort, due to economic or other conditions, cannot be set up in and by an ordinance to be submitted to the vote of the people.[16]

Va. Whitehead v. H & C Development Corp., 204 Va. 144, 129 S.E.2d 691 (1963), citing this treatise.

Wash. Citizens for Financially Responsible Government v. City of Spokane, 99 Wash. 2d 339, 662 P.2d 845 (1983); Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980), quoting this treatise; Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise; State ex rel. Becker v. Common Council of City of Milwaukee, 101 Wis. 2d 680, 305 N.W.2d 178 (Ct. App. 1981) (demand for removal of police chief administrative action); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967), quoting this treatise.

[15]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987), citing this treatise § 16:54 (3d Ed).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

Okla. In re Referendum Petition No. 1968-1 of City of Norman, 1970 OK 143, 475 P.2d 381, 2 Empl. Prac. Dec. (CCH) ¶ 10263 (Okla. 1970) (uniform, permanent and universal rule subject to referendum).

Tex. City of Austin v. Findlay, 538 S.W.2d 9 (Tex. Civ. App. Austin 1976), quoting this treatise.

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967), quoting this treatise.

[16]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

Fla. State v. City of St. Petersburg, 61 So. 2d 416 (Fla. 1952), quoting this treatise.

Ill. Petition of Mitchell, 44 Ill. App. 2d 361, 194 N.E.2d 560 (2d Dist. 1963) (fixing of water rates), citing this treatise.

N.J. Cuprowski v. City of Jersey City, 101 N.J. Super. 15, 242 A.2d 873 (Law Div. 1968), aff'd, 103 N.J. Super. 217, 247 A.2d 28 (App. Div. 1968), quoting this treatise.

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232,

The test of what is a legislative and what is an administrative proposition, with respect to the initiative or referendum, has further been said to be whether the proposition is one to make new law or to execute law already in existence.[17] The

910 P.2d 308 (1996).

Okla. Fite v. Lacey, 1984 OK 83, 691 P.2d 901, 120 L.R.R.M. (BNA) 3017 (Okla. 1984), quoting this treatise.

Tex. City of Austin v. Findlay, 538 S.W.2d 9 (Tex. Civ. App. Austin 1976), quoting this treatise.

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967), quoting this treatise.

[17]**Ariz.** Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998); Wennerstrom v. City of Mesa, 169 Ariz. 485, 821 P.2d 146 (1991), citing this treatise.

Ark. Gregg v. Hartwick, 292 Ark. 528, 731 S.W.2d 766 (1987).

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Mo. Anderson v. Smith, 377 S.W.2d 554 (Mo. Ct. App. 1964), quoting this treatise; State ex rel. Whittington v. Strahm, 374 S.W.2d 127 (Mo. 1963) (determination to fluoridate water supply was legislative act), citing this treatise.

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998); City of Billings v. Nore, 148 Mont. 96, 417 P.2d 458 (1966).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Ohio. Myers v. Schiering, 27 Ohio St. 2d 11, 56 Ohio Op. 2d 6, 271 N.E.2d 864 (1971) (approval of sanitary landfill not subject to referendum); State ex rel. Barberis v. City of Bay Village, 31 Ohio Misc. 203, 59 Ohio Op. 2d 366, 60 Ohio Op. 2d 382, 281 N.E.2d 209 (C.P. 1971).

Or. Lane Transit Dist. v. Lane County, 327 Or. 161, 957 P.2d 1217 (1998); Whitbeck v. Funk, 140 Or. 70, 12 P.2d 1019 (1932) (purchase of real estate is not legislative); Amalgamated Transit Union-Division 757 v. Yerkovich, 24 Or. App. 221, 545 P.2d 1401 (1976).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Tex. City of Austin v. Findlay, 538 S.W.2d 9 (Tex. Civ. App. Austin 1976), quoting this treatise.

Utah. Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153 (Utah

power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.[18]

2002).

Va. Whitehead v. H & C Development Corp., 204 Va. 144, 129 S.E.2d 691 (1963), citing this treatise.

Wash. Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980), quoting this treatise; Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (3rd Ed); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967), quoting this treatise.

[18]**Ariz.** Wennerstrom v. City of Mesa, 169 Ariz. 485, 821 P.2d 146 (1991), citing this treatise.

Ark. Gregg v. Hartwick, 292 Ark. 528, 731 S.W.2d 766 (1987).

Cal. Hughes v. City of Lincoln, 232 Cal. App. 2d 741, 43 Cal. Rptr. 306 (3d Dist. 1965), citing this treatise; O'Loane v. O'Rourke, 231 Cal. App. 2d 774, 42 Cal. Rptr. 283 (2d Dist. 1965), quoting this treatise; People v. Smith, 184 Cal. App. 2d 606, 7 Cal. Rptr. 607 (2d Dist. 1960), quoting this treatise.

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987) (purchasing site for city hall and relocating historic schoolhouse for renovation constituting administrative matters); Witcher v. Canon City, 716 P.2d 445 (Colo. 1986), citing this treatise (3rd Ed); City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977) (utility rate increase).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Ill. People v. City of Centralia, 1 Ill. App. 2d 228, 117 N.E.2d 410 (4th Dist. 1953).

Ky. Seaton v. Lackey, 298 Ky. 188, 182 S.W.2d 336 (1944);City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

Mo. Reynolds v. City of Independence, 693 S.W.2d 129 (Mo. Ct. App. W.D. 1985), quoting this treatise; Anderson v. Smith, 377 S.W.2d 554 (Mo. Ct. App. 1964), quoting this treatise.

Mont. Dieruf v. City of Bozeman, 173 Mont. 447, 568 P.2d 127 (1977) (overruled by, Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998)) (assessment to pay for off-street parking facility).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

S.C. Town of Hilton Head Island v. Coalition of Expressway Op-

Similarly, an act or resolution constituting a declaration of public purpose and making provision for ways and means of its accomplishment is generally legislative as distinguished from an act or resolution which merely carries out the policy or purpose already declared by the legislative body.[19] In applying the "legislative" versus "administrative" test distinguishing on the basis of "new policy or plan" versus "pursuit of plan already adopted," the court will apply a liberal rule of construction so that, for example, a resolution approving an annexation has been construed as municipal legislation

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ponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Utah. Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153 (Utah 2002).

Va. Whitehead v. H & C Development Corp., 204 Va. 144, 129 S.E.2d 691 (1963), citing this treatise.

Wash. Heider v. City of Seattle, 100 Wash. 2d 874, 675 P.2d 597 (1984); Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980), quoting this treatise; Leonard v. Bothell, 87 Wash 2d 847, 557 P2d 1306 (holding amendment of zoning code administrative function), quoting this treatise.

Referendum petition concerning ordinance enacting business and occupation tax concerned legislative matter since ordinance did not concern a preexisting policy of municipality but rather a new tax and since in addition, title and language of ordinance were phrased as new law. Citizens for Financially Responsible Government v. City of Spokane, 99 Wash. 2d 339, 662 P.2d 845 (1983); Priorities First v. City of Spokane, 93 Wash. App. 406, 968 P.2d 431 (Div. 3 1998).

Wis. Save Our Fire Dept. Paramedics Committee v. City of Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986), citing this treatise (ordinance establishing emergency medical services as legislative); Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967), quoting this treatise.

[19]**Ariz.** Wennerstrom v. City of Mesa, 169 Ariz. 485, 821 P.2d 146 (1991), citing this treatise.

Cal. Reagan v. City of Sausalito, 210 Cal. App. 2d 618, 26 Cal. Rptr. 775 (1st Dist. 1962), citing this treatise; People v. Smith, 184 Cal. App. 2d 606, 7 Cal. Rptr. 607 (2d Dist. 1960); Duran v. Cassidy, 28 Cal. App. 3d 574, 104 Cal. Rptr. 793 (5th Dist. 1972).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Ohio. State ex rel. Barberis v. City of Bay Village, 31 Ohio Misc. 203, 59 Ohio Op. 2d 366, 60 Ohio Op. 2d 382, 281 N.E.2d 209 (C.P. 1971) (approval of low-income housing project implementing federal statute).

in that it was characterized as a new law to which referendum powers apply.[20] The distinction between "legislative" and "administrative" matters is the distinction between making laws of general applicability and permanent nature, on the one hand, as opposed to decisions implementing such general rules, on the other.[21] Whether a particular municipal activity is administrative or is legislation often depends not on the nature of the action but the nature of the legal framework in which the action occurs.[22]

An ordinance need not directly affect the general public in order to be legislative within the contemplation of an initiative and referendum statute; the public may be indirectly benefited by its direct effect on some of the employees of the city.[23] Furthermore, the form of a municipal procedure will be disregarded and the substance of its act, as administrative or legislative, will be considered in determining the applicability to it of laws pertaining to referendum.[24] Where a matter is of local rather than statewide concern, a local deci-

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[20]**Ark.** Gregg v. Hartwick, 292 Ark. 528, 731 S.W.2d 766 (1987).

Or. Lane Transit Dist. v. Lane County, 327 Or. 161, 957 P.2d 1217 (1998).

Liberal rule of construction, see § 16:50.

[21]**Ariz.** Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Utah. Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153 (Utah 2002).

[22]**Ariz.** Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990) (street renaming as administrative because administrative framework existed covering that subject matter).

[23]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

[24]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947)1 (measure not permanent simply by putting in form of ordinance).

sion which is intrinsically legislative retains that character even in the presence of a state law authorizing or setting limits on the particular field of action.[25]

Whether an ordinance is subject to initiative or referendum is a judicial question.[26] While the general rule is that a court will refrain from determining the validity of a proposed law prior to enactment, including an initiative or referendum measure, there are exceptions.[27] One exception is where the

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Mo. Williams v. City of Kirkwood, 537 S.W.2d 571 (Mo. Ct. App. 1976), quoting this treatise; State ex rel. Whittington v. Strahm, 374 S.W.2d 127 (Mo. 1963), citing this treatise (routine purchase ordinance, ordinarily administrative).

Neb. Hoover v. Carpenter, 188 Neb. 405, 197 N.W.2d 11 (1972).

[25]**Cal.** Hughes v. City of Lincoln, 232 Cal. App. 2d 741, 43 Cal. Rptr. 306 (3d Dist. 1965).

[26]**U.S.** Perkins v. City of Chicago Heights, 47 F.3d 212 (7th Cir. 1995) (changing units of home rule authority).

Ariz. Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998).

Ark. Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

Cal. DeVita v. County of Napa, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

Mich. MGM Grand Detroit, LLC v. Community Coalition for Empowerment Inc., 465 Mich. 303, 633 N.W.2d 357 (2001).

Mont. Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

Nev. Eller Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002); Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Ohio. State ex rel. Barberis v. City of Bay Village, 31 Ohio Misc. 203, 59 Ohio Op. 2d 366, 60 Ohio Op. 2d 382, 281 N.E.2d 209 (C.P. 1971).

Or. Lane Transit Dist. v. Lane County, 327 Or. 161, 957 P.2d 1217 (1998); Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

S.D. State ex rel. Lindstrom v. Goetz, 73 S.D. 633, 47 N.W.2d 566 (1951).

[27]**Ariz.** Saggio v. Connelly, 147 Ariz. 240, 709 P.2d 874 (1985) (consideration of whether initiative defective in form).

proposed law is beyond the scope of the initiative or referendum power,[28] although a challenge on this ground has been refused as presenting a nonjusticiable controversy since the proposition may be rejected if first submitted to the electorate.[29] However, if the initiated ordinance is facially defective, the courts may undertake preelection review.[30] The public does not have a right to obtain a vote to enact

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Ark. Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

Mo. Writ of prohibition on substantive grounds issuable only if such grounds are clear and well settled as to constitute form. State ex rel. Trotter v. Cirtin, 941 S.W.2d 498 (Mo. 1997).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990) (legal characterization of legislation as within judicial province).

Nev. Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002); Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Wash. Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980).

[28]**Ariz.** Saggio v. Connelly, 147 Ariz. 240, 709 P.2d 874 (1985) (disincorporation of city).

Cal. Since initiative proposition which would require that city submit to voters for their approval any revenue raising measure before measure could be implemented was in conflict with state law, proposed initiative ordinance was invalid. City of Atascadero v. Daly, 135 Cal. App. 3d 466, 185 Cal. Rptr. 228 (5th Dist. 1982).

Or. Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990) (legal characterization of legislation as within judicial province).

Nev. Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

Pa. Hempfield School Dist. v. Election Bd. of Lancaster County, 133 Pa. Commw. 85, 574 A.2d 1190, 60 Ed. Law Rep. 827 (1990) (only school district as having authority to submit referendum on school financing).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

Wash. Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980).

[29]**Tex.** Green v. City of Lubbock, 627 S.W.2d 868 (Tex. App. Amarillo 1981), writ refused n.r.e., (June 9, 1982); Coalson v. City Council of Victoria, 610 S.W.2d 744 (Tex. 1980).

[30]**Nev.** Citizens for Public Train Trench Vote v. City of Reno, 118 Nev. 574, 53 P.3d 387 (2002).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

invalid legislation.[31] The construction of initiative and referendum statutes as including only legislative measures is controlled by their language as well as the inherent nature of the question.[32] The word "ordinance" in a provision for referendum has frequently, and almost universally, been construed to mean ordinances which are legislative in character,[33] particularly where it is further provided that an ordinance adopted under such provision cannot be repealed or amended except by a vote of the people.[34]

§ 16:55 Measures submissible—Police and emergency measures

Research References

Am. Jur. 2d, Initative and Referendum § 15

The power of initiative or referendum is extended by some constitutions, statutes or charters to all laws or ordinances of municipalities except such as may be necessary for the immediate preservation of the public health, peace, or safety, or support of the state government and its existing public institutions.[1] Indeed, the power of initiative or referendum

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[31]**S.C.** Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

[32]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

[33]**Cal.** Housing Authority of City of Eureka v. Superior Court in and for Humboldt County, 35 Cal. 2d 550, 219 P.2d 457 (1950) ("ordinance or measure").

Mo. Carson v. Oxenhandler, 334 S.W.2d 394 (Mo. Ct. App. 1960).

[34]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

[Section 16:55]

[1]**Ark.** Burroughs v. Ingram, 319 Ark. 530, 893 S.W.2d 319 (1995).

Colo. Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923); Witkin Homes, Inc. v. City and County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972) (precluding referendum by declaring necessary for immediate preservation of health and safety).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965).

Mo. Murray v. City of St. Louis, 947 S.W.2d 74 (Mo. Ct. App. E.D. 1997); State ex rel. Tyler v. Davis, 443 S.W.2d 625 (Mo. 1969); State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947).

Ohio. State ex rel. Snyder v. Board of Elections of Lucas County, 78

often is not applicable to emergency police legislation.[2] Sometimes it is the rule that an ordinance with an emergency clause takes immediate effect subject to the right of the electorate to rescind it within the time within which all ordinances are subject to referendum.[3] It may be noted that state legislation providing for local approval in a particular matter has been termed an emergency measure and held

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Ohio App. 194, 33 Ohio Op. 519, 69 N.E.2d 634 (6th Dist. Lucas County 1946) (constitutional exemptions not applicable to municipal legislation).

S.D. State v. Davis, 41 S.D. 327, 170 N.W. 519 (1919); Christensen v. Carson, 533 N.W.2d 712 (S.D. 1995).

Wash. State v. Hinkle, 161 Wash. 652, 297 P. 1071 (1931); Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994); State ex rel. Gray v. Martin, 29 Wash. 2d 799, 189 P.2d 637 (1948).

[2]**Ark.** Burroughs v. Ingram, 319 Ark. 530, 893 S.W.2d 319 (1995).

Fla. Scott v. City of Orlando, 173 So. 2d 501 (Fla. Dist. Ct. App. 2d Dist. 1965).

Ill. Buck v. City of Danville, 350 Ill. App. 519, 113 N.E.2d 186 (3d Dist. 1953).

Mo. State ex rel. Boatmen's Nat. Bank of St. Louis v. Webster Groves General Sewer Dist. No. 1 of St. Louis County, 327 Mo. 594, 37 S.W.2d 905 (1931); State ex rel. Whittington v. Strahm, 366 S.W.2d 495 (Mo. Ct. App. 1963), transferred to Mo. S. Ct., 374 S.W.2d 127 (Mo. 1963) (water fluoridation not emergency measure); State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947).

Ohio. State ex rel. Tester v. Board of Elections of Ottawa County, 174 Ohio St. 15, 21 Ohio Op. 2d 107, 185 N.E.2d 762 (1962); State ex rel. City of Fostoria v. King, 154 Ohio St. 213, 43 Ohio Op. 1, 94 N.E.2d 697 (1950); Shryock v. City of Zanesville, 92 Ohio St. 375, 110 N.E. 937 (1915).

Okla. In re Referendum Petition No. 1, Town of Haskell, 1938 OK 131, 182 Okla. 419, 77 P.2d 1152 (1938).

Or. Greenberg v. Lee, 196 Or. 157, 248 P.2d 324, 35 A.L.R.2d 567 (1952); Thielke v. Albee, 79 Or. 48, 153 P. 793 (1915).

Tex. Denman v. Quin, 116 S.W.2d 783 (Tex. Civ. App. San Antonio 1938), writ refused (emergency ordinance levying ad valorem property tax).

Wash. State v. Hinkle, 161 Wash. 652, 297 P. 1071 (1931); Arnold v. Carroll, 106 Wash. 241, 179 P. 801 (1919).

Taking effect of emergency ordinances, § 15:37.

[3]**Ark.** Railey v. City of Magnolia, 197 Ark. 1047, 126 S.W.2d 273 (1939).

Colo. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989) (ordinance clause allowing emergency ordinance or resolution to be immediately effective as presumptively correct and binding).

valid.[4] It is noteworthy, too, that the state constitution itself may declare that certain kinds of measures may not be construed as urgency measures.[5]

In some jurisdictions, a constitutional exception from the referendum process any laws which were enacted for health or safety, does not apply to the initiative process.[6]

In some instances, for an ordinance not to be subject to referendum, it is necessary that it contain a statement of emergency or urgency.[7] Sometimes such a requirement is deemed to be mandatory and not directory or advisory.[8] Specification of an actual existing public emergency may be required.[9] A mere statement that passage of the ordinance is

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[4]**Cal.** Davis v. Los Angeles County, 12 Cal. 2d 412, 84 P.2d 1034 (1938) (act establishing pension system).

Ill. See Gasick v. Dunlap Public Library Dist. of Peoria County, 164 Ill. App. 3d 232, 115 Ill. Dec. 489, 517 N.E.2d 1175 (3d Dist. 1987).

[5]**Cal.** Klassen v. Burton, 110 Cal. App. 2d 539, 243 P.2d 28 (1st Dist. 1952) (creating or abolishing office).

[6]**S.D.** Christensen v. Carson, 533 N.W.2d 712 (S.D. 1995).

[7]**Ark.** Burroughs v. Ingram, 319 Ark. 530, 893 S.W.2d 319 (1995) (no statement or fact showing existence of emergency requiring immediate change in procedure for calling special meetings).

Mo. Murray v. City of St. Louis, 947 S.W.2d 74 (Mo. Ct. App. E.D. 1997); State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947).

Ohio. State ex rel. Lipovsky v. Kizak, 15 Ohio St. 2d 27, 44 Ohio Op. 2d 16, 238 N.E.2d 777 (1968) (emergency income tax to maintain essential services); Tamele v. Brinkman, 30 Ohio Misc. 49, 59 Ohio Op. 2d 292, 284 N.E.2d 210 (C.P. 1972) (annexation not emergency); State ex rel. Groghan v. Rulon, 14 Ohio Op. 2d 91, 84 Ohio L. Abs. 464, 169 N.E.2d 640 (C.P. 1960).

Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989).

Wash. State ex rel. Gray v. Martin, 29 Wash. 2d 799, 189 P.2d 637 (1948).

[8]**Ark.** Burroughs v. Ingram, 319 Ark. 530, 893 S.W.2d 319 (1995) (statute requiring statement of facts constituting emergency).

Mo. State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947).

[9]**Ark.** Burroughs v. Ingram, 319 Ark. 530, 893 S.W.2d 319 (1995) (no statement or fact showing existence of emergency requiring immediate change in procedure for calling special meetings).

Cal. West Hollywood Concerned Citizens v. City of West Hollywood, 232 Cal. App. 3d 486, 283 Cal. Rptr. 470 (2d Dist. 1991).

necessary for immediate preservation of public peace may not suffice.[10] It has been both affirmed[11] and denied[12] that the legislative declaration of an emergency is conclusive in determining that the ordinance is exempt from application of the referendum laws.[13] It has been ruled that courts have

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Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989).

Wash. State ex rel. Gray v. Martin, 29 Wash. 2d 799, 189 P.2d 637 (1948).

[10]**Mo.** State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947).

Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989) (determination of existence of emergency in ordinances as exclusively legislative function).

[11]**Colo.** Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923).

Ill. Buck v. City of Danville, 350 Ill. App. 519, 113 N.E.2d 186 (3d Dist. 1953).

Mo. Murray v. City of St. Louis, 947 S.W.2d 74 (Mo. Ct. App. E.D. 1997).

Ohio. State ex rel. Tester v. Board of Elections of Ottawa County, 174 Ohio St. 15, 21 Ohio Op. 2d 107, 185 N.E.2d 762 (1962).

Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989) (judgment of emergency as legislative function not subject to court review).

Wash. Matter of McNeill, 113 Wash. 2d 302, 778 P.2d 524 (1989) (charges in petition as insufficient to establish prima facie case of misfeasance in office).

[12]**Ark.** It is a matter of legislative determination whether an emergency exists that requires the enactment of an emergency clause, but it is a judicial determination whether facts constituting an emergency are stated. Burroughs v. Ingram, 319 Ark. 530, 893 S.W.2d 319 (1995).

Cal. Los Angeles County v. City Council of City of Lawndale, 202 Cal. App. 2d 20, 20 Cal. Rptr. 363 (2d Dist. 1962).

Ky. Kentucky Utilities Co. v. Ginsberg, 255 Ky. 148, 72 S.W.2d 738 (1934).

Mo. State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947).

N.M. Todd v. Tierney, 38 N.M. 15, 27 P.2d 991 (1933).

[13]**Mo.** Murray v. City of St. Louis, 947 S.W.2d 74 (Mo. Ct. App. E.D. 1997).

Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989).

Wash. Matter of McNeill, 113 Wash. 2d 302, 778 P.2d 524 (1989).

Conclusiveness of declaration of emergency with respect to when

power to declare void emergency ordinances where no emergency exists and where it appears that the purpose is to preclude a referendum.[14] However, in judicially determining whether an ordinance is emergent a court may give great weight to the declaration of emergency as expressed by the legislative body.[15] The council's power to defeat a referendum on legislation by enacting it as an emergency measure has been held to be exercisable even after a referendum petition has been filed against a nonemergency ordinance, by passing an emergency ordinance repealing the ordinance under referendum and reenacting substantially the same ordinance.[16]

In response to the growing evidence of a strong relationship between alcohol abuse and crime, a state enacted a local option law.[17] Under the law, any municipal government that desires to regulate the importation or distribution of alcoholic beverages can conduct a referendum election.[18] Local referendum elections are conducted under state supervision and when the results are certified by the state, violations of any restrictions adopted in the election are subject to criminal prosecution by the state.[19] The local option law is justified as a health and welfare measure.[20] There is a sufficient close and substantial relationship between the local option law and the legislative purpose of protecting the public health and welfare.[21] Such a law is constitutional and is not a denial of equal protection, due process or the right to

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ordinance takes effect, § 15:37.

[14]**Or.** Joplin v. Ten Brook, 124 Or. 36, 263 P. 893 (1928).

[15]**Mo.** Murray v. City of St. Louis, 947 S.W.2d 74 (Mo. Ct. App. E.D. 1997).

Okla. Quinn v. City of Tulsa, 1989 OK 112, 777 P.2d 1331 (Okla. 1989).

Wash. Matter of McNeill, 113 Wash. 2d 302, 778 P.2d 524 (1989); State ex rel. Gray v. Martin, 29 Wash. 2d 799, 189 P.2d 637 (1948).

[16]**Ohio.** State ex rel. Tester v. Board of Elections of Ottawa County, 174 Ohio St. 15, 21 Ohio Op. 2d 107, 185 N.E.2d 762 (1962).

[17]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

[18]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

[19]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

[20]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

[21]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

privacy.[22]

§ 16:56 Measures submissible—Illustrations

Illustrative of the discussion in the preceding sections, the following have been deemed proper propositions for initiative or referendum:[1] deannexation of land;[2] amendment of bond issue;[3] extension of city boundaries;[4] change of boundaries of council districts;[5] reorganization of city government,[6] transfer of certain school grades into a single school;[7] renova-

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[22]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

[Section 16:56]

[1]**Mich.** Settles v. Detroit City Clerk, 169 Mich. App. 797, 427 N.W.2d 188 (1988) (ordinance banning casino gambling as subject to initiative).

Propositions that must or need not be submitted, § 16:57.

[2]**Ark.** Gregg v. Hartwick, 292 Ark. 528, 731 S.W.2d 766 (1987).

Ill. See Gasick v. Dunlap Public Library Dist. of Peoria County, 164 Ill. App. 3d 232, 115 Ill. Dec. 489, 517 N.E.2d 1175 (3d Dist. 1987).

Okla. Matter of Referendum Petition Filed with City Clerk of Norman on January 31, 1980, 1980 OK 61, 610 P.2d 243 (Okla. 1980), citing this treatise.

[3]**N.J.** Lawrence v. Schrof, 162 N.J. Super. 375, 392 A.2d 1243 (Law Div. 1978).

[4]**Colo.** Leach & Arnold Homes, Inc. v. City of Boulder, 32 Colo. App. 16, 507 P.2d 476 (1973).

Ohio. Tamele v. Brinkman, 30 Ohio Misc. 49, 59 Ohio Op. 2d 292, 284 N.E.2d 210 (C.P. 1972).

S.D. State ex rel. Lindstrom v. Goetz, 73 S.D. 633, 47 N.W.2d 566 (1951).

Annexation elections, Ch 7.

[5]**Cal.** Blotter v. Farrell, 42 Cal. 2d 804, 270 P.2d 481 (1954).

[6]**U.S.** Perkins v. City of Chicago Heights, 47 F.3d 212 (7th Cir. 1995) (change from strong mayor form of government).

Ark. Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

Conn. Van Deusen v. Town of Watertown, 62 Conn. App. 298, 771 A.2d 176 (2001).

N.Y. Mayor of City of New York v. Council of City of New York, 280 A.D.2d 380, 721 N.Y.S.2d 39 (1st Dep't 2001) (local law permitting city council to designate two persons for mayor's appointment to the police investigatory board was invalid without a voter referendum).

[7]**N.J.** Gamrin v. Mayor and Council of City of Englewood, 76 N.J. Super. 555, 185 A.2d 55 (Law Div. 1962).

tion of county jail;[8] acquisition or construction of a public utility;[9] repeal of a "Gay Rights" ordinance;[10] rejection of low-cost housing projects;[11] need for federal rent control;[12] preventing discrimination in employment, public accommodations and housing;[13] zoning[14] and rezoning[15] of land;

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[8]**Cal.** Citizens Against a New Jail v. Board of Supervisors, 63 Cal. App. 3d 559, 134 Cal. Rptr. 36 (1st Dist. 1976).

[9]**N.J.** Rowson v. Township Committee of Mantua Tp., 171 N.J. Super. 129, 408 A.2d 137 (App. Div. 1979).

Ohio. State ex rel. Didelius v. City Commission of City of Sandusky, 131 Ohio St. 356, 6 Ohio Op. 64, 2 N.E.2d 862 (1936).

Referendum as to municipal ownership of public utility generally, Ch 35.

[10]**Minn.** St. Paul Citizens for Human Rights v. City Council of City of St. Paul, 289 N.W.2d 402, 20 Empl. Prac. Dec. (CCH) ¶ 30211 (Minn. 1979).

[11]**U.S.** City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003) (holding no equal protection or substantive due process violations in allowing submission of referendum on low-income housing); City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 96 S. Ct. 2358, 49 L. Ed. 2d 132 (1976); James v. Valtierra, 402 U.S. 137, 91 S. Ct. 1331, 28 L. Ed. 2d 678 (1971) (use of long-established referendum procedures to reject low-cost housing projects not violative of the Civil Rights Act or equal protection laws).

Cal. Bruce v. City of Alameda, 166 Cal. App. 3d 18, 212 Cal. Rptr. 304 (1st Dist. 1985).

[12]**Ohio.** Sauder v. City of Akron, 58 Ohio L. Abs. 102, 94 N.E.2d 403 (C.P. 1950), quoting this treatise.

[13]**Okla.** In re Referendum Petition No. 1968-1 of City of Norman, 1970 OK 143, 475 P.2d 381, 2 Empl. Prac. Dec. (CCH) ¶ 10263 (Okla. 1970).

[14]**U.S.** City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 96 S. Ct. 2358, 49 L. Ed. 2d 132 (1976).

Cal. Yost v. Thomas, 36 Cal. 3d 561, 205 Cal. Rptr. 801, 685 P.2d 1152 (1984); Arnel Development Co. v. City of Costa Mesa, 28 Cal. 3d 511, 169 Cal. Rptr. 904, 620 P.2d 565 (1980).

For full discussion of zoning by initiative or referendum, see § 25.246.

[15]**Mo.** State ex rel. Hickman v. City Council of Kirksville, 690 S.W.2d 799 (Mo. Ct. App. W.D. 1985).

Mont. Greens at Fort Missoula, LLC v. City of Missoula, 271 Mont. 398, 897 P.2d 1078 (1995).

Ohio. State ex rel. Baur v. Medina Cty. Bd. of Elections, 90 Ohio St. 3d 165, 2000, 2000-Ohio-49, 736 N.E.2d 1 (2000).

contract for a municipal gas supply;[16] permitting private contracting for garbage collection;[17] fluoridation of water;[18] licensing of saloons;[19] rezoning ordinances;[20] continuing use of parking meters;[21] contract for lease-purchase of parking meters;[22] approval or rejection of a municipal business and occupation tax;[23] approval or rejection of a sales tax;[24] authorization of a municipal ban on the importation and sale of alcohol;[25] and authorization of Sunday liquor sales.[26]

On the other hand, the following have been deemed not subject to initiative or referendum: transient orders to a particular person;[27] attempt to construe a charter amendment;[28] amendment of a city charter to provide enclosed

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For full discussion of zoning by initiative or referendum, see § 25.246.

[16]**Ohio.** State ex rel. Baur v. Medina Cty. Bd. of Elections, 90 Ohio St. 3d 165, 2000, 2000-Ohio-49, 736 N.E.2d 1 (2000); Goodman v. City of Hamilton, 21 Ohio App. 465, 4 Ohio L. Abs. 598, 153 N.E. 217 (1st Dist. Butler County 1926).

[17]**S.D.** Byre v. City of Chamberlain, 362 N.W.2d 69 (S.D. 1985).

[18]**Cal.** Hughes v. City of Lincoln, 232 Cal. App. 2d 741, 43 Cal. Rptr. 306 (3d Dist. 1965).

[19]**Neb.** In re Doerr, 97 Neb. 562, 150 N.W. 625 (1915).

[20]**Ariz.** Fritz v. City of Kingman, 191 Ariz. 432, 957 P.2d 337 (1998).

Conn. Vibert v. Board of Educ. of Regional School Dist. No. 10, 260 Conn. 167, 793 A.2d 1076, 163 Ed. Law Rep. 866 (2002).

[21]**Tex.** Jones v. Gonzales, 344 S.W.2d 745 (Tex. Civ. App. Amarillo 1961), writ refused n.r.e., (June 28, 1961).

[22]**U.S.** Duncan Parking Meter Corp. v. City of Gurdon, 146 F. Supp. 280 (W.D. Ark. 1956).

[23]**Wash.** Citizens for Financially Responsible Government v. City of Spokane, 99 Wash. 2d 339, 662 P.2d 845 (1983).

[24]**Colo.** Board of County Com'rs of County of Archuleta v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

[25]**Alaska.** Harrison v. State, 687 P.2d 332 (Alaska Ct. App. 1984).

[26]**N.J.** Abramowitz v. Kimmelman, 200 N.J. Super. 303, 491 A.2d 78 (Law Div. 1984), judgment aff'd, 203 N.J. Super. 118, 495 A.2d 1362 (App. Div. 1985); Anthony v. Rea, 22 N.J. Super. 452, 92 A.2d 100 (App. Div. 1952).

[27]**Or.** Long v. City of Portland, 53 Or. 92, 98 P. 149 (1908), aff'd, 53 Or. 92, 98 P. 1111 (1909).

[28]**Wash.** State ex rel. Pike v. City of Bellingham, 183 Wash. 439, 48 P.2d 602 (1935).

sleeping areas for homeless families;[29] issuance of licenses pursuant to administrative order;[30] establishment of a federal aid route;[31] approval of a federal flood control project;[32] appropriating money for a flood control project;[33] settlement of claims in litigation;[34] construction of proposed freeway;[35] expansion of existing interstate highway;[36] limiting the ability of the state highway department to collect tolls;[37] limiting terms served by legislators;[38] contract for newspaper publication of legal advertisements;[39] disincorporation of a city;[40] changing the number of wards,[41] changing the number of representatives within each ward or district,[42] appointment, removal,[43] reduction in salaries of,[44] or demotion[45] of public

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[29]**N.Y.** Adams v. Cuevas, 133 Misc. 2d 63, 506 N.Y.S.2d 614 (Sup 1986), judgment aff'd, 123 A.D.2d 526, 506 N.Y.S.2d 501 (1st Dep't 1986), order aff'd, 68 N.Y.2d 188, 507 N.Y.S.2d 848, 499 N.E.2d 1246 (1986).

[30]**Tex.** White Top Cab Co. v. City of Houston, 440 S.W.2d 732 (Tex. Civ. App. Houston 14th Dist. 1969) (taxicab permits).

[31]**Kan.** State v. Morton, 128 Kan. 125, 276 P. 62 (1929).

[32]**Kan.** State ex rel. Frank v. Salome, 167 Kan. 766, 208 P.2d 198 (1949).

[33]**Ohio.** State ex rel. Brunthaver v. Bauman, 18 Ohio St. 2d 59, 47 Ohio Op. 2d 170, 247 N.E.2d 310 (1969) (ordinance).

[34]**Minn.** Oakman v. City of Eveleth, 163 Minn. 100, 203 N.W. 514 (1925).

[35]**Or.** Amalgamated Transit Union-Division 757 v. Yerkovich, 24 Or. App. 221, 545 P.2d 1401 (1976).

S.C. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

[36]**Cal.** Committee of Seven Thousand v. Superior Court, 45 Cal. 3d 491, 247 Cal. Rptr. 362, 754 P.2d 708 (1988) (transportation corridors).

Wash. Seattle Bldg. and Const. Trades Council v. City of Seattle, 94 Wash. 2d 740, 620 P.2d 82 (1980).

[37]**S.C.** Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992).

[38]**Alaska.** Alaskans for Legislative Reform v. State, 887 P.2d 960 (Alaska 1994).

[39]**Ga.** Key v. Wofford, 175 Ga. 749, 166 S.E. 204 (1932).

Ky. City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

[40]**Ariz.** Saggio v. Connelly, 147 Ariz. 240, 709 P.2d 874 (1985).

[41]**Ark.** Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

[42]**Ark.** Moorman v. Priest, 310 Ark. 525, 837 S.W.2d 886 (1992).

[43]**Conn.** State v. Hunter, 97 Conn. 579, 117 A. 548 (1922).

Mass. McCartin v. School Committee of Lowell, 322 Mass. 624, 79

officers; establishment of street grades;[46] renaming of street where administrative scheme exists for that activity,[47] rescission of voters' previous action authorizing issuance of municipal hospital bonds;[48] lowering maximum property tax rate;[49] reduction of the sales or use tax rates;[50] issuance of industrial revenue bonds;[51] repeal of a parking meter ordinance;[52] creation of off-street parking districts;[53] discontinuance of a municipal parking lot;[54] city redevelopment plan;[55] liquidation of uncompleted redevelopment project;[56] completion of the construction of a municipal building;[57] rezoning;[58] approval of capital expenditures for an addition to a high

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N.E.2d 192 (1948).

[44]**Or.** Lane Transit Dist. v. Lane County, 327 Or. 161, 957 P.2d 1217 (1998).

[45]**Mass.** McCartin v. School Committee of Lowell, 322 Mass. 624, 79 N.E.2d 192 (1948).

[46]**Cal.** St. John v. King, 130 Cal. App. 356, 20 P.2d 123 (1st Dist. 1933).

[47]**Or.** Foster v. Clark, 309 Or. 464, 790 P.2d 1 (1990).

[48]**S.D.** Custer City v. Robinson, 79 S.D. 91, 108 N.W.2d 211 (1961).

Bond elections, Ch 40.

[49]**Ill.** Sommer v. Village of Glenview, 79 Ill. 2d 383, 38 Ill. Dec. 170, 403 N.E.2d 258 (1980).

[50]**Ark.** Stilley v. Henson, 342 Ark. 346, 28 S.W.3d 274 (2000).

[51]**Kan.** Rauh v. City of Hutchinson, 223 Kan. 514, 575 P.2d 517 (1978).

[52]**Cal.** Mervynne v. Acker, 189 Cal. App. 2d 558, 11 Cal. Rptr. 340 (4th Dist. 1961).

[53]**Cal.** Alexander v. Mitchell, 119 Cal. App. 2d 816, 260 P.2d 261 (1st Dist. 1953).

[54]**N.Y.** Ferdon v. Rogers, 43 Misc. 2d 676, 252 N.Y.S.2d 1 (Sup 1964), judgment aff'd, 23 A.D.2d 851, 259 N.Y.S.2d 187 (2d Dep't 1965).

[55]**Cal.** Gibbs v. City of Napa, 59 Cal. App. 3d 148, 130 Cal. Rptr. 382 (1st Dist. 1976); Walker v. City of Salinas, 56 Cal. App. 3d 711, 128 Cal. Rptr. 832 (1st Dist. 1976).

[56]**Wis.** Prechel v. City of Monroe, 40 Wis. 2d 231, 161 N.W.2d 373 (1968).

[57]**Neb.** State ex rel. Ballantyne v. Leeman, 149 Neb. 847, 32 N.W.2d 918 (1948).

[58]**Colo.** Wright v. City of Lakewood, 43 Colo. App. 480, 608 P.2d 361 (1979), judgment aff'd in part, rev'd in part, 638 P.2d 297 (Colo. 1981).

Minn. Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002), review denied, (June 18, 2002) (state land use and zoning laws preempting charter provision allowing referendum).

school pending adoption of a master plan;[59] establishing limits on annual increases in a town's budget;[60] extension of a municipal utility;[61] fixing of utility rates and charges for municipally furnished public utilities;[62] utility rate ordinances;[63] watering metering ordinance;[64] acquisition of park lands[65] or other property by a municipality;[66] purchase of real estate;[67] preventing uncoordinated and unplanned growth;[68] creation of city agency to regulate landlord-tenant matters;[69] increasing city sales tax to fund police force;[70]

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[59]**Wis.** Heider v. Common Council of City of Wauwatosa, 37 Wis. 2d 466, 155 N.W.2d 17 (1967).

[60]**Conn.** West Hartford Taxpayers Ass'n, Inc. v. Streeter, 190 Conn. 736, 462 A.2d 379 (1983) (nonapplicability of initiative procedure to budgetary ordinances).

[61]**Wash.** State ex rel. Guthrie v. City of Richland, 80 Wash. 2d 382, 494 P.2d 990 (1972) (improvement and extension of municipal waterworks).

Wis. Denning v. City of Green Bay, 271 Wis. 230, 72 N.W.2d 730 (1955) (extensions of municipal water utility).

[62]**N.M.** Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

Okla. In re Supreme Court Adjudication of Initiative Petitions in Norman, Oklahoma Numbered 74-1 and 74-2, 1975 OK 36, 534 P.2d 3 (Okla. 1975).

[63]**Cal.** Bock v. City Council, 109 Cal. App. 3d 52, 167 Cal. Rptr. 43 (2d Dist. 1980) (unlawful delegation of authority to public utility commission).

Colo. City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977).

N.M. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308 (1996).

[64]**Mont.** Town of Whitehall v. Preece, 1998 MT 53, 288 Mont. 55, 956 P.2d 743 (1998).

[65]**N.Y.** Gerzof v. Sweeney, 34 Misc. 2d 1039, 229 N.Y.S.2d 807 (Sup 1962).

[66]**Mich.** Beach v. City of Saline, 412 Mich. 729, 316 N.W.2d 724 (1982); Rollingwood Homeowners Corp. v. City of Flint, 386 Mich. 258, 191 N.W.2d 325 (1971).

[67]**Mich.** Beach v. City of Saline, 101 Mich. App. 795, 300 N.W.2d 698 (1980), aff'd in part, appeal denied in part, 412 Mich. 729, 316 N.W.2d 724 (1982).

[68]**Wash.** Whatcom County v. Brisbane, 125 Wash. 2d 345, 884 P.2d 1326 (1994).

[69]**Md.** Cheeks v. Cedlair Corp., 287 Md. 595, 415 A.2d 255 (1980) (initiative invalid).

change in specifications and form of a building contract;[71] adoption of a historic district ordinance pursuant to statute;[72] a change in the number of county board members;[73] advice by municipality to state legislature regarding nonlocal matter;[74] and establishment of equal pay scale for fire and police departments.[75]

The construction of applicable laws has led to opposite conclusions, at least as far as results, in the following cases relating to: selection of sites for public buildings;[76] acquisition of property for a public park, playground, or other municipal purpose;[77] financing the acquisition of park lands;[78] urban development;[79] establishment of a housing authority;[80]

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[70]**Okla.** In re Supreme Court Adjudication of Sufficiency of Initiative Petition in Tulsa, Concerning a One Cent Sales Tax Increase for Funding Additional Police Personnel and Compensation, 1979 OK 103, 597 P.2d 1208 (Okla. 1979).

[71]**Cal.** Burdick v. City of San Diego, 29 Cal. App. 2d 565, 84 P.2d 1064 (4th Dist. 1938).

[72]**Conn.** Van Deusen v. Town of Watertown, 62 Conn. App. 298, 771 A.2d 176 (2001).

[73]**Ill.** League of Women Voters of Peoria v. Peoria County, 121 Ill. 2d 236, 117 Ill. Dec. 275, 520 N.E.2d 626 (1987).

[74]**N.J.** Board of Chosen Freeholders of Mercer County v. Szaferman, 117 N.J. 94, 563 A.2d 1132 (1989).

[75]**Kan.** City of Lawrence v. McArdle, 214 Kan. 862, 522 P.2d 420 (1974).

[76]**Cal.** Simpson v. Hite, 36 Cal. 2d 125, 222 P.2d 225 (1950) (not subject to initiative); Knowlton v. Hezmalhalch, 32 Cal. App. 2d 419, 89 P.2d 1109 (4th Dist. 1939) (selection of city hall site subject to referendum); Burdick v. City of San Diego, 29 Cal. App. 2d 565, 84 P.2d 1064 (4th Dist. 1938) (initiative or referendum proper).

Colo. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987) (purchase of city hall site not subject to referendum).

[77]**Cal.** Reagan v. City of Sausalito, 210 Cal. App. 2d 618, 26 Cal. Rptr. 775 (1st Dist. 1962) (funds for acquisition of property; referendum proper); Duran v. Cassidy, 28 Cal. App. 3d 574, 104 Cal. Rptr. 793 (5th Dist. 1972) (initiative proper).

S.D. City of Mission v. Abourezk, 318 N.W.2d 124 (S.D. 1982) (purchase of realty formerly rented as municipal liquor store).

[78]**N.Y.** Queensbury Ass'n v. Town Bd. of Town of Queensbury, 135 Misc. 2d 118, 515 N.Y.S.2d 193 (Sup 1987); Gerzof v. Sweeney, 34 Misc. 2d 1039, 229 N.Y.S.2d 807 (Sup 1962) (subject to initiative or referendum).

[79]**Cal.** O'Loane v. O'Rourke, 231 Cal. App. 2d 774, 42 Cal. Rptr. 288 (2d Dist. 1965) (general plan subject to initiative or referendum).

public improvements;[81] granting public utility franchises;[82]

Fla. Barnes v. City of Miami, 47 So. 2d 3 (Fla. 1950) (housing program under federal act appropriate to submission).

Ohio. State ex rel. Wingerter v. City Council of City of Canton, 7 Ohio St. 2d 26, 36 Ohio Op. 2d 15, 218 N.E.2d 183 (1966) (urban renewal not subject to referendum).

[80]**Ark.** Cochran v. Black, 240 Ark. 393, 400 S.W.2d 280 (1966) (repeal of ordinances creating and activating housing authority subject to vote of people).

Cal. Housing Authority of City of Eureka v. Superior Court in and for Humboldt County, 35 Cal. 2d 550, 219 P.2d 457 (1950) (not subject to referendum); Andrews v. City of San Bernardino, 175 Cal. App. 2d 459, 346 P.2d 457 (4th Dist. 1959) (not subject to referendum).

Mo. Carson v. Oxenhandler, 334 S.W.2d 394 (Mo. Ct. App. 1960) (initiative or referendum proper).

W.Va. Bachmann v. Goodwin, 121 W. Va. 303, 3 S.E.2d 532 (1939) (subject to initiative or referendum).

[81]**Ark.** Paving Dist. No. 36 v. Little, 170 Ark. 1160, 282 S.W. 971 (1926) (initiative or referendum improper).

Cal. Mefford v. City of Tulare, 102 Cal. App. 2d 919, 228 P.2d 847 (4th Dist. 1951) (sewer improvement subject to initiative).

Ill. Village of Crotty v. Domm, 338 Ill. 228, 170 N.E. 308 (1930) (initiative or referendum improper); Dallas City v. Steingraber, 321 Ill. 318, 151 N.E. 888 (1926) (initiative or referendum improper).

Neb. Read v. City of Scottsbluff, 139 Neb. 418, 297 N.W. 669 (1941) (initiative or referendum improper).

N.J. French v. Board of City Com'rs of Ocean City, 136 N.J.L. 57, 54 A.2d 196 (N.J. Sup. Ct. 1947) (referendum proper); McLaughlin v. City of Millville, 110 N.J. Super. 200, 264 A.2d 762 (Law Div. 1970) (lease of sewage facility referendum proper).

N.Y. Application of Thilly, 283 A.D. 668, 126 N.Y.S.2d 691 (2d Dep't 1954) (bond resolution not subject to referendum).

Referendum on improvement ordinance, Ch 37.

[82]**Ark.** Tomlinson Bros. v. Hodges, 110 Ark. 528, 162 S.W. 64 (1913) (to furnish electric light, initiative or referendum not permitted).

Iowa. Des Moines City Ry. Co. v. Susong, 168 Iowa 128, 150 N.W. 6 (1914) (initiative or referendum not permitted).

Ky. Seaton v. Lackey, 298 Ky. 188, 182 S.W.2d 336 (1944) (street franchise not subject to initiative or referendum); Vanmeter v. City of Paris, 257 S.W.2d 909 (Ky. 1953) (sale of electric franchise, initiative or referendum permitted).

Mass. Kelty v. Flynn, 223 Mass. 369, 111 N.E. 857 (1916) (franchise to occupy streets; initiative or referendum permitted).

Wash. State v. Superior Court for Spokane County, 87 Wash. 582, 152 P. 11 (1915) (telephone franchise; initiative or referendum permitted).

fixing public utility rates;[83] sale of municipal property;[84] purchase of equipment;[85] zoning;[86] and authorization of

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Submitting franchise to vote of people, Ch 34.

[83]**U.S.** Columbus Gas & Fuel Co. v. City of Columbus, Ohio, 42 F.2d 379 (C.C.A. 6th Cir. 1930) (rate regulation subject to initiative or referendum).

Ark. Terral v. Arkansas Light & Power Co., 137 Ark. 523, 210 S.W. 139 (1919) (rate change subject to initiative or referendum); Southern Cities Distributing Co. v. Carter, 44 S.W.2d 362 (Ark. 1931) (subject to referendum).

Mich. McKinley v. City of Fraser, 366 Mich. 104, 114 N.W.2d 341 (1962) (initiative or referendum proper); Walker Bros. Catering Co. v. Detroit City Gas Co., 230 Mich. 564, 203 N.W. 492 (1925) (gas rates subject to referendum).

Neb. Hoover v. Carpenter, 188 Neb. 405, 197 N.W.2d 11 (1972).

N.Y. International Ry. Co. v. Rann, 224 N.Y. 83, 120 N.E. 153 (1918) (streetcar fare increase subject to referendum).

Ohio. State ex rel. Portmann v. City Council of City of Massillon, 134 Ohio St. 113, 11 Ohio Op. 545, 16 N.E.2d 214 (1938) (referendum on fixing rates for electric current).

Tex. Dallas Ry. Co. v. Geller, 114 Tex. 484, 271 S.W. 1106 (1925); Southwestern Telegraph & Telephone Co. v. City of Dallas, 104 Tex. 114, 134 S.W. 321 (1911); Denman v. Quin, 116 S.W.2d 783 (Tex. Civ. App. San Antonio 1938), writ refused (not subject to initiative or referendum).

Wash. State ex rel. Haas v. Pomeroy, 50 Wash. 2d 23, 308 P.2d 684 (1957) (water rates; referendum right inapplicable).

Fixing of public utility rates by initiative and referendum, Ch 34.

[84]**Ill.** People v. City of Centralia, 1 Ill. App. 2d 228, 117 N.E.2d 410 (4th Dist. 1953) (sale of municipal airport not subject to initiative).

Mich. Sinas v. City of Lansing, 382 Mich. 407, 170 N.W.2d 23 (1969) (charter requirement superseded as to sale of urban renewal property).

Ohio. Geiger v. Kobie, 60 Ohio L. Abs. 555, 102 N.E.2d 481 (Ct. App. 8th Dist. Cuyahoga County 1951) (sale of electric light plant subject to initiative).

Okla. Yarbrough v. Donaldson, 1918 OK 73, 67 Okla. 318, 170 P. 1165 (1918) (sale of electric light plant not subject to initiative or referendum).

Referendum on sale of municipal property, Ch 28.

[85]**Mo.** State ex rel. Whittington v. Strahm, 366 S.W.2d 495 (Mo. Ct. App. 1963), transferred on other grounds to Mo. S. Ct., 374 S.W.2d 127 (Mo. 1963) (purchase of equipment for adding fluorides subject to initiative or referendum).

Or. Monahan v. Funk, 137 Or. 580, 3 P.2d 778 (1931), quoting this treatise (purchase of equipment for garbage incinerator plant not subject to referendum).

Sunday moving pictures.[87]

As indicated in the footnote, opposite conclusions have also been reached as to whether propositions or measures involving questions of taxation are subject to initiative or

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[86]**Cal.** Fletcher v. Porter, 203 Cal. App. 2d 313, 21 Cal. Rptr. 452 (1st Dist. 1962) (initiative or referendum proper).

Colo. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972) (zoning map amendment subject to referendum procedures); Wright v. City of Lakewood, 43 Colo. App. 480, 608 P.2d 361 (1979), judgment aff'd in part, rev'd in part on other grounds, 638 P.2d 297 (Colo. 1981) (zoning and rezoning are legislative in character and thus are subject to the referendum and initiative powers reserved to the people under the State Constitution).

Mich. Korash v. City of Livonia, 38 Mich. App. 626, 196 N.W.2d 883 (1972), decision aff'd, 388 Mich. 737, 202 N.W.2d 803 (1972) (zoning act controlling initiative provisions of charter).

Mo. State ex rel. Wahlmann v. Reim, 445 S.W.2d 336 (Mo. 1969) (comprehensive zoning ordinance in third class cities operating under commission form of government).

Neb. Kelley v. John, 162 Neb. 319, 75 N.W.2d 713 (1956) (rezoning not subject to referendum); Schroeder v. Zehrung, 108 Neb. 573, 188 N.W. 237 (1922) (resolution to gather zoning information not subject to referendum).

Nev. Initiative's use as to zoning is not unconstitutional, despite property owners' due process rights to notice and an opportunity to be heard, as state constitution reserved to the people the right to propose, through initiative, statutes and amendments as to all local, special, and municipal legislation of every kind. Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002).

N.J. Smith v. Livingston Tp., 106 N.J. Super. 444, 256 A.2d 85 (Ch. Div. 1969), judgment aff'd, 54 N.J. 525, 257 A.2d 698 (1969) (amendment of zoning ordinance).

Ohio. State ex rel. Diversified Realty, Inc. v. Board of Trustees of Perry Tp., 42 Ohio App. 2d 56, 71 Ohio Op. 2d 271, 327 N.E.2d 789 (7th Dist. Columbiana County 1974) (rezoning of township property).

Utah. Bird v. Sorenson, 16 Utah 2d 1, 394 P.2d 808 (1964) (change of zoning classifications not subject to referendum).

Application of initiative and referendum process to zoning matters, Ch 25.

[87]**N.Y.** Reycroft v. City of Binghamton, 138 Misc. 257, 245 N.Y.S. 375 (Sup 1930) (not submissible).

Pa. Petition for Sunday Movie in City of Pottsville, 363 Pa. 460, 70 A.2d 651 (1950) (initiative or referendum proper).

Tenn. Bean v. City of Knoxville, 180 Tenn. 448, 175 S.W.2d 954 (1943)4 (initiative or referendum proper).

referendum.[88] The view has been taken that initiative is not intended as a mere power of veto over tax legislation.[89]

Referendum is not available for reduction of a city's budget, where it is not authorized by statute for the purpose,[90] and initiative and referendum are not applicable to appropriation ordinances essential to render a statutory budget system effective.[91]

Initiative may be improper where the measure would have a direct or indirect effect on the laws appropriating funds.[92] In some jurisdictions, a proposed initiative ordinance involv-

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[88]**Cal.** Hunt v. Mayor and Council of City of Riverside, 31 Cal. 2d 619, 191 P.2d 426 (1948) (sales tax excepted from referendum provisions); Rossi v. Brown, 9 Cal. 4th 688, 38 Cal. Rptr. 2d 363, 889 P.2d 557 (1995) (exclusion of tax measures from referendum power not limiting power to repeal taxes by initiative; Dare v. Lakeport City Council, 12 Cal. App. 3d 864, 91 Cal. Rptr. 124 (1st Dist. 1970).

Ill. Sommer v. Village of Glenview, 79 Ill. 2d 383, 38 Ill. Dec. 170, 408 N.E.2d 258 (1980) (referenda to adjust tax rates unconstitutional limitation on powers of home-rule unit).

Ky. Kohler v. Benckart, 252 S.W.2d 854 (Ky. 1952) (occupational tax not subject to referendum).

Mo. State ex rel. Schmill v. Carr, 239 Mo. App. 939, 203 S.W.2d 670 (1947) (cigarette tax submissible to referendum); State ex rel. Tyler v. Davis, 443 S.W.2d 625 (Mo. 1969) (utility tax to provide emergency funds not subject).

Neb. State ex rel. Boyer v. Grady, 201 Neb. 360, 269 N.W.2d 73 (1978) (one percent sales tax subject to initiative).

Ohio. State ex rel. Snyder v. Board of Elections of Lucas County, 78 Ohio App. 194, 33 Ohio Op. 519, 69 N.E.2d 634 (6th Dist. Lucas County 1946) (payroll and income tax subject to referendum).

Or. Garbade v. City of Portland, 188 Or. 158, 214 P.2d 1000 (1950) (overruled by, Multnomah County v. Mittleman, 275 Or. 545, 552 P.2d 242 (1976)) (business license tax subject to referendum); Campbell v. City of Eugene, 116 Or. 264, 240 P. 418 (1925) (initiative or referendum proper).

Tex. Denman v. Quin, 116 S.W.2d 783 (Tex. Civ. App. San Antonio 1938), writ refused (ad valorem property tax not subject to referendum).

[89]**Ky.** Batten v. Hambley, 400 S.W.2d 683 (Ky. 1966).

[90]**Mass.** Gilet v. City Clerk of Lowell, 306 Mass. 170, 27 N.E.2d 748 (1940).

N.J. Cuprowski v. City of Jersey City, 101 N.J. Super. 15, 242 A.2d 873 (Law Div. 1968), aff'd, 103 N.J. Super. 217, 247 A.2d 28 (App. Div. 1968) (budgetary matters not submissible).

[91]**Fla.** State v. City of St. Petersburg, 106 Fla. 742, 145 So. 175 (1933).

[92]**D.C.** District of Columbia Bd. of Elections and Ethics v. Jones, 481 A.2d 456 (D.C. 1984).

ing or requiring the appropriation or expenditure of money must provide for means to obtain revenue sufficient to meet or defray such appropriation or expenditure,[93] otherwise the proposed ordinance may be fatally defective.[94]

An ordinance fixing salaries of municipal officers or employees has been ruled to be an administrative act and not subject to initiative and referendum.[95] Some charters provide that all charter amendments are subject to the voters' consent.[96] This result has been reached with respect to the salaries of municipal firemen[97] and policemen,[98] as well as to their appointment, working hours, vacations, and days

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[93]**Mo.** State ex rel. Sessions v. Bartle, 359 S.W.2d 716 (Mo. 1962) (constitutional requirement construed and applied).

[94]**Mo.** Kansas City v. McGee, 364 Mo. 896, 269 S.W.2d 662 (1954); State ex rel. Sessions v. Bartle, 359 S.W.2d 716 (Mo. 1962) (proposed initiative increasing salaries of fire department held defective in failing to provide new revenue to pay increases).

N.J. Cuprowski v. City of Jersey City, 101 N.J. Super. 15, 242 A.2d 873 (Law Div. 1968), aff'd, 103 N.J. Super. 217, 247 A.2d 28 (App. Div. 1968).

[95]**Cal.** Dwyer v. City Council of Berkeley, 200 Cal. 505, 253 P. 932 (1927); Bagley v. City of Manhattan Beach, 18 Cal. 3d 22, 132 Cal. Rptr. 668, 553 P.2d 1140, 93 L.R.R.M. (BNA) 2435, 79 Lab. Cas. (CCH) ¶ 53874 (1976); Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

Ill. People ex rel. Holvey v. Kapp, 355 Ill. 596, 189 N.E. 920 (1934).

Iowa. Murphy v. Gilman, 204 Iowa 58, 214 N.W. 679 (1927).

Ky. City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

N.J. Lettieri v. Governing Body of City of Bayonne, 168 N.J. Super. 423, 403 A.2d 64 (Law Div. 1979) (mayor's salary).

Vote of electors as fixing salaries, §§ 12.174 et seq.

[96]**Ohio.** State ex rel. Citizens for a Better Portsmouth v. Sydnor, 61 Ohio St. 3d 49, 572 N.E.2d 649 (1991) (authorities not permitted to delay submission of amendment to voters because of disagreement with content).

[97]**Ga.** Greer v. City of Atlanta, 223 Ga. 137, 153 S.E.2d 567 (1967); McElroy v. Hartsfield, 185 Ga. 264, 194 S.E. 737 (1937).

Ky. City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

Utah. Shriver v. Bench, 6 Utah 2d 329, 313 P.2d 475 (1957).

Salaries of policemen and firemen, Ch 45.

[98]**Colo.** See Greeley Police Union v. City Council of Greeley, 191 Colo. 419, 553 P.2d 790, 93 L.R.R.M. (BNA) 2382, 79 Lab. Cas. (CCH) ¶ 53873 (1976).

Ky. City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

Utah. Shriver v. Bench, 6 Utah 2d 329, 313 P.2d 475 (1957).

off without pay.[99] Also an initiative petition requesting a charter amendment that there be binding arbitration for firefighters and police officers is not a proper subject for initiative.[100]

On the other hand, the view has been taken that an ordinance fixing salaries is not an administrative function and is subject to initiative or referendum,[101] at least with respect to salaries of specified municipal officers,[102] such as police, firemen,[103] or teachers.[104]

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[99]**Ky.** City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

[100]**Okla.** Fite v. Lacey, 1984 OK 83, 691 P.2d 901, 120 L.R.R.M. (BNA) 3017 (Okla. 1984).

[101]**Cal.** Collins v. City & County of San Francisco, 112 Cal. App. 2d 719, 247 P.2d 362 (1st Dist. 1952).

N.J. Furlong v. Board of Com'rs of Town of Nutley, 15 N.J. Super. 541, 83 A.2d 652 (Law Div. 1951).

S.D. State ex rel. Martin v. Eastcott, 53 S.D. 191, 220 N.W. 613 (1928).

Tex. Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645 (1951), citing this treatise.

Wash. State ex rel. Pike v. City of Bellingham, 183 Wash. 439, 48 P.2d 602 (1935).

Wis. Thompson v. Village of Whitefish Bay, 257 Wis. 151, 42 N.W.2d 462 (1950).

[102]**N.Y.** Welty v. Heafy, 200 Misc. 1010, 108 N.Y.S.2d 578 (Sup 1951), judgment aff'd, 279 A.D. 662, 107 N.Y.S.2d 1022 (2d Dep't 1951).

S.D. State ex rel. Martin v. Eastcott, 53 S.D. 191, 220 N.W. 613 (1928); State v. Davis, 41 S.D. 327, 170 N.W. 519 (1919).

Wash. State ex rel. Pike v. City of Bellingham, 183 Wash. 439, 48 P.2d 602 (1935).

[103]**Ariz.** Parrack v. City of Phoenix, 84 Ariz. 382, 329 P.2d 1103 (1958); Williams v. Parrack, 83 Ariz. 227, 319 P.2d 989 (1957).

Cal. Spencer v. City of Alhambra, 44 Cal. App. 2d 75, 111 P.2d 910 (2d Dist. 1941).

Ill. People ex rel. Holvey v. Smith, 260 Ill. App. 166, 1931 WL 2916 (3d Dist. 1931).

Ky. Generally, initiative provisions are applicable only to acts which are legislative in character, not to acts dealing with administrative or executive matters, and where power to be exercised prescribes a new policy or plan, it is "legislative", whereas if it merely pursues a plan already adopted by a legislative body or some power superior thereto, it is "administrative". City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1960).

Mass. Morra v. City Clerk of New Bedford, 340 Mass. 240, 163 N.E.2d 268 (1960).

Nev. City of Las Vegas v. Ackerman, 85 Nev. 493, 457 P.2d 525 (1969)

It has been held that a charter amendment relating to firefighters hours of labor is submissible by initiative,[105] and that a proposed ordinance on the same subject is subject to referendum.[106]

§ 16:57 Measures requiring or not requiring submission

Research References

West's Key Number Digest, Municipal Corporations ⇐108.5

Initiative or referendum sometimes is required under a charter or statute with respect to ordinances or measures as to certain matters.[1] Illustrative of matters that frequently must be submitted or that are at least subject to submission,

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(firefighters).

Tex. Glass v. Smith, 150 Tex. 632, 244 S.W.2d 645 (1951), citing this treatise.

Wash. State ex rel. Leo v. City of Tacoma, 184 Wash. 160, 49 P.2d 1113 (1935); State ex rel. Payne v. City of Spokane, 17 Wash. 2d 22, 134 P.2d 950 (1943).

Such defeat of an increase in pay does not mean that thereafter no increase of pay can legally be granted to members of such departments, see Ch 21.

[104]**U.S.** Cobb v. City of Malden, 105 F. Supp. 109 (D. Mass. 1952), judgment aff'd in part, rev'd in part, 202 F.2d 701 (1st Cir. 1953), construing Massachusetts act providing for city referendum and following Gorman v. City of Peabody, 312 Mass. 560, 45 N.E.2d 939 (1942).

[105]**Tex.** Edwards v. Murphy, 256 S.W.2d 470 (Tex. Civ. App. Fort Worth 1953), writ dismissed.

[106]**Ala.** Hawkins v. City of Birmingham, 248 Ala. 692, 29 So. 2d 281 (1947).

[Section 16:57]

[1]**U.S.** Crebs v. City of Lebanon, 98 F. 549 (C.C.W.D. Mo. 1898); Ramos v. State of Ill., 781 F. Supp. 1353 (N.D. Ill. 1991), order aff'd, 976 F.2d 335 (7th Cir. 1992) (applying Illinois law).

Ark. Smith v. Lawson, 184 Ark. 825, 43 S.W.2d 544 (1931).

Cal. Plaza Amusement Co. v. Carter, 11 Cal. App. 2d 414, 54 P.2d 67 (1st Dist. 1936).

Colo. Board of County Com'rs of County of Archuleta v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Ill. Ramos v. State of Ill., 781 F. Supp. 1353 (N.D. Ill. 1991), order aff'd, 976 F.2d 335 (7th Cir. 1992) (redistricting of wards).

Kan. State v. Jacobs, 135 Kan. 513, 11 P.2d 739 (1932).

N.Y. Mayor of City of New York v. Council of City of New York, 280

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n. 3.

Ala.—Bright v. Calhoun, 2008 WL 110485 (Ala. 2008).

Fla.—D.R. Horton, Inc.—Jacksonville v. Peyton, 959 So. 2d 390 (Fla. Dist. Ct. App. 1st Dist. 2007), review denied, 969 So. 2d 1012 (Fla. 2007).

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n. 16.

Ala.—Bright v. Calhoun, 2008 WL 110485 (Ala. 2008).

IV. INITIATIVE AND REFERENDUM

§ 16:47 Generally

Research References

West's Key Number Digest, Constitutional Law ⇐65

n. 1.

Alaska—Staudenmaier v. Municipality of Anchorage, 139 P.3d 1259 (Alaska 2006).

Cal.—Totten v. Board of Supervisors of County of Ventura, 139 Cal. App. 4th 826, 43 Cal. Rptr. 3d 244 (2d Dist. 2006), review denied, (Aug. 16, 2006).

n. 2.

Alaska—Staudenmaier v. Municipality of Anchorage, 139 P.3d 1259 (Alaska 2006).

Ariz.—Forszt v. Rodriguez, 212 Ariz. 263, 130 P.3d 538 (Ct. App. Div. 2 2006).

Cal.—Totten v. Board of Supervisors of County of Ventura, 139 Cal. App. 4th 826, 43 Cal. Rptr. 3d 244 (2d Dist. 2006), review denied, (Aug. 16, 2006); Wal-Mart Real Estate Business Trust v. City Council of City of San Marcos, 132 Cal. App. 4th 614, 33 Cal. Rptr. 3d 817 (4th

Dist. 2005); Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005); Native American Sacred Site and Environmental Protection Ass'n (NASSEPA) v. City of San Juan Capistrano, 120 Cal. App. 4th 961, 16 Cal. Rptr. 3d 146 (4th Dist. 2004); Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005).

n. 3.

U.S.—City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003); City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 679, 96 S. Ct. 2358, 49 L. Ed. 2d 132 (1976).

Cal.—Wal-Mart Real Estate Business Trust v. City Council of City of San Marcos, 132 Cal. App. 4th 614, 33 Cal. Rptr. 3d 817 (4th Dist. 2005); Native American Sacred Site and Environmental Protection Ass'n (NASSEPA) v. City of San Juan Capistrano, 120 Cal. App. 4th 961, 16 Cal. Rptr. 3d 146 (4th Dist. 2004).

Nev.—Horne v. City of Mesquite, 100 P.3d 168 (Nev. 2004).

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

n. 4.

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n. 5.

Ariz.—Forszt v. Rodriguez, 212 Ariz. 263, 130 P.3d 538 (Ct. App. Div. 2 2006).

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N.J.—Where the right of referendum is statutorily granted, the grant is to be liberally construed to promote, where appropriate, its beneficial effects. In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Utah—Sevier Power Co., LLC v. Board of Sevier County Com'rs, 2008 UT 72, 196 P.3d 583 (Utah 2008).

N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Va.—Committee of Petitioners for Referendum ex rel. Kerry v. City of Norfolk, 645 S.E.2d 464 (Va. 2007).

Add after note 3:

Citizens do not have unlimited and unqualified rights to challenge the acts of local municipal governments by referendum.[3.50]

[3.50]N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

§ 16:53 Measures submissible

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West's Key Number Digest, Municipal Corporations ⇐108.7; Statutes ⇐301

n. 1.

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Utah—Mouty v. The Sandy City Recorder, 2005 UT 41, 122 P.3d 521 (Utah 2005).

n. 2.

Utah—Mouty v. The Sandy City Recorder, 2005 UT 41, 122 P.3d 521 (Utah 2005).

n. 3.

Alaska—Staudenmaier v. Municipality of Anchorage, 139 P.3d 1259 (Alaska 2006).

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Wash.—City of Sequim v. Malkasian, 157 Wash. 2d 251, 138 P.3d 943 (2006).

n. 4.

Alaska—Staudenmaier v. Municipality of Anchorage, 139 P.3d 1259 (Alaska 2006).

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Wash.—City of Sequim v. Malkasian, 157 Wash. 2d 251, 138 P.3d 943 (2006).

n. 9.

Alaska—Staudenmaier v. Municipality of Anchorage, 139 P.3d 1259 (Alaska 2006).

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005); State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation, v. Lakewood, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362 (2003); State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St. 3d 478, 2008-Ohio-5093, 895 N.E.2d 177 (2008).

n. 15.

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005).

n. 17.

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005).

Wash.—Maleng v. King County Corrections Guild, 150 Wash. 2d 325, 76 P.3d 727 (2003).

§ 16:54 Measures submissible—Legislative or administrative measures

Research References

West's Key Number Digest, Constitutional Law ⇐65

n. 1.

Ariz.—Redelsperger v. City of Avondale, 207 Ariz. 430, 87 P.3d 843 (Ct. App. Div. 1 2004), citing this treatise.

Cal.—Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005).

Idaho—City of Boise City v. Keep the Commandments Coalition, 143 Idaho 254, 141 P.3d 1123 (2006).

State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005); State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005); State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation, v. Lakewood, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362 (2003).

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007); State ex rel. Marsalek v. S. Euclid City Council, 111 Ohio St. 3d 163, 2006-Ohio-4973, 855 N.E.2d 811 (2006); State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St. 3d 478, 2008-Ohio-5093, 895 N.E.2d 177 (2008).

Utah—Save Beaver County v. Beaver County, 2009 UT 8, 203 P.3d 937 (Utah 2009).

Wash.—City of Seattle v. Yes for Seattle, 122 Wash. App. 382, 93 P.3d 176 (Div. 1 2004), review denied, 153 Wash. 2d 1020, 108 P.3d 1228 (2005); Maleng v. King County Corrections Guild, 150 Wash. 2d 325, 76 P.3d 727 (2003).

n. 2.

Ariz.—Redelsperger v. City of Avondale, 207 Ariz. 430, 87 P.3d 843 (Ct. App. Div. 1 2004), citing this treatise.

Cal.—Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005).

n. 3.

Ariz.—Stop Exploiting Taxpayers v. Jones, 211 Ariz. 576, 125 P.3d 396 (Ct. App. Div. 1 2005); Redelsperger v. City of Avondale, 207 Ariz. 430, 87 P.3d 843 (Ct. App. Div. 1 2004), citing this treatise.

Cal.—Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005).

Idaho—City of Boise City v. Keep the Commandments Coalition, 143 Idaho 254, 141 P.3d 1123 (2006).

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007); State ex rel. Marsalek v. S. Euclid City Council, 111 Ohio St. 3d 163, 2006-Ohio-4973, 855 N.E.2d 811 (2006); State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005); State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005); State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation, v. Lakewood, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362 (2003); State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St. 3d 478, 2008-Ohio-5093, 895 N.E.2d 177 (2008).

Utah—Citizens for Responsible Transp. v. Draper City, 2008 UT 43, 190 P.3d 1245 (Utah 2008); Save Beaver County v. Beaver County, 2009 UT 8, 203 P.3d 937 (Utah 2009).

n. 4.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

Add after note 4:

The distinction may also be done away with by the referendum statute.[4.50]

[4.50]**N.J.**—In re Ordinance 04-75, 192 N.J. 446, 931 A.2d 595 (2007) (judicially-created legislative/administrative distinction not supported by the statute, its legislative history, or its place in the overall statutory scheme).

n. 6.

Cal.—Totten v. Board of Supervisors of County of Ventura, 139

Cal. App. 4th 826, 43 Cal. Rptr. 3d 244 (2d Dist. 2006), review denied, (Aug. 16, 2006); Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005).

n. 7.

Cal.—Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005).

n. 8.

Cal.—Worthington v. City Council of City of Rohnert Park, 130 Cal. App. 4th 1132, 31 Cal. Rptr. 3d 59 (1st Dist. 2005).

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005).

Okla.—In re Initiative Petition No. 27 of City of Oklahoma City, 2003 OK 104, 82 P.3d 90, 174 L.R.R.M. (BNA) 2508 (Okla. 2003), quoting text.

Add after note 8:

It has been stated that all acts taken by a city council in a city organized pursuant to the council-mayor form of government are necessarily legislative and subject to referenda.[8.50]

[8.50]**Utah**—Mouty v. The Sandy City Recorder, 2005 UT 41, 122 P.3d 521 (Utah 2005).

n. 9.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005).

n. 11.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

n. 12.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007).

n. 14.

Ariz.—Stop Exploiting Taxpayers v. Jones, 211 Ariz. 576, 125 P.3d 396 (Ct. App. Div. 1 2005).

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007) (quoting text); State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005).

n. 17.

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007) (quoting text); State ex rel. Marsalek v. S. Euclid City Council, 111 Ohio St. 3d 163, 2006-Ohio-4973, 855 N.E.2d 811 (2006); State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005); State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005); State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St. 3d 478, 2008-Ohio-5093, 895 N.E.2d 177 (2008).

Utah—Citizens for Responsible Transp. v. Draper City, 2008 UT 43, 190 P.3d 1245 (Utah 2008).

Wis.—Mount Horeb Community Alert v. Village Bd. of Mt. Horeb, 263 Wis. 2d 544, 2003 WI 100, 665 N.W.2d 229 (2003), quoting treatise.

n. 18.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004), citing text.

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005); State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005); State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation, v. Lakewood, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362 (2003).

Utah—Citizens for Responsible Transp. v. Draper City, 2008 UT 43, 190 P.3d 1245 (Utah 2008).

Wis.—Mount Horeb Community Alert v. Village Bd. of Mt. Horeb, 263 Wis. 2d 544, 2003 WI 100, 665 N.W.2d 229 (2003), quoting treatise.

n. 19.

Ariz.—Redelsperger v. City of Avondale, 207 Ariz. 430, 87 P.3d 843 (Ct. App. Div. 1 2004), quoting this treatise.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007); State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St. 3d 478, 2008-Ohio-5093, 895 N.E.2d 177 (2008), quoting this treatise.

n. 21.

Ohio—State ex rel. N. Main St. Coalition v. Webb, 106 Ohio St. 3d 437, 2005-Ohio-5009, 835 N.E.2d 1222 (2005); State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005); State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation, v. Lakewood, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362 (2003).

n. 22.

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

Ohio—State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005).

n. 23.

N.J.—In re Referendum Petition to Repeal Ordinance 04-75, 388 N.J. Super. 405, 908 A.2d 846 (App. Div. 2006), certification denied, 189 N.J. 646, 917 A.2d 786 (2007).

n. 26.

Ariz.—Redelsperger v. City of Avondale, 207 Ariz. 430, 87 P.3d 843 (Ct. App. Div. 1 2004), citing this treatise.

Cal.—Pettye v. City And County of San Francisco, 118 Cal. App. 4th 233, 12 Cal. Rptr. 3d 798 (1st Dist. 2004), as modified on denial of reh'g, (May 25, 2004) and review denied, (July 21, 2004).

Ohio—State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections, 115 Ohio St. 3d 437, 2007-Ohio-5379, 875 N.E.2d 902 (2007).

Ohio—State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005).

n. 27.

Utah—Citizens for Responsible Transp. v. Draper City, 2008 UT 43, 190 P.3d 1245 (Utah 2008).

n. 28.

Ohio—State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005).

Utah—Citizens for Responsible Transp. v. Draper City, 2008 UT 43, 190 P.3d 1245 (Utah 2008).

n. 30.

Ohio—State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico, 106 Ohio St. 3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (2005).

Add at the end of the section:

As far as the federal constitutional right of due process is concerned, the Supreme Court has rejected the distinction between legislative and administrative referenda.[35] A referendum cannot be characterized as a "delegation of power," and thus, the doctrine that a legislative delegation of power to regulatory bodies must be accompanied by discernible standards is inapplicable.[36] The right of referendum is not a delegation of power, rather it is a power reserved by the people to themselves.[37]

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[35]U.S.—City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003); City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 679, 96

S. Ct. 2358, 49 L. Ed. 2d 132 (1976).

[36]U.S.—City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003); City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 679, 96 S. Ct. 2358, 49 L. Ed. 2d 132 (1976).

[37]U.S.—City of Cuyahoga Falls, Ohio v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389, 155 L. Ed. 2d 349 (2003); City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 679, 96 S. Ct. 2358, 49 L. Ed. 2d 132 (1976).

§ 16:55 Measures submissible—Police and emergency measures

Research References

West's Key Number Digest, Municipal Corporations ⇐108.6

n. 1.

Ohio—State ex rel. Webb v. Bliss, 99 Ohio St. 3d 166, 2003-Ohio-3049, 789 N.E.2d 1102 (2003).

n. 2.

Ohio—State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

n. 7.

Ohio—There is no requirement that an emergency declaration in a municipal ordinance contain specific language that its enactment is an "immediate" necessity. State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

Ohio—State ex rel. Webb v. Bliss, 99 Ohio St. 3d 166, 2003-Ohio-3049, 789 N.E.2d 1102 (2003) (recital of emergency insufficient).

n. 8.

Ohio—State ex rel. Webb v. Bliss, 99 Ohio St. 3d 166, 2003-Ohio-3049, 789 N.E.2d 1102 (2003).

n. 9.

Ohio—State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

n. 10.

Ohio—State ex rel. Webb v. Bliss, 99 Ohio St. 3d 166, 2003-Ohio-3049, 789 N.E.2d 1102 (2003).

n. 11.

Ohio—State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

n. 13.

Ohio—State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

n. 14.

Ohio—State ex rel. Webb v. Bliss, 99 Ohio St. 3d 166, 2003-Ohio-3049, 789 N.E.2d 1102 (2003).

n. 16.

Ohio—State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

§ 16:56 Measures submissible—Illustrations

Research References

West's Key Number Digest, Municipal Corporations ⇨108.1

n. 6.

Wash.—Maleng v. King County Corrections Guild, 150 Wash. 2d 325, 76 P.3d 727 (2003) (amendment to charter to reduce size of county council).

Add after note 9:

submission of construction projects exceeding a certain cost for voter approval;[9.50]

[9.50]**Wis.**—Mount Horeb Community Alert v. Village Bd. of Mt. Horeb, 263 Wis. 2d 544, 2003 WI 100, 665 N.W.2d 229 (2003).

n. 15.

Utah—Mouty v. The Sandy City Recorder, 2005 UT 41, 122 P.3d 521 (Utah 2005); Save Beaver County v. Beaver County, 2009 UT 8, 203 P.3d 937 (Utah 2009).

n. 58.

Okla.—Terry v. Bishop, 2007 OK 29, 158 P.3d 1067 (Okla. 2007).

n. 62.

Ariz.—Stop Exploiting Taxpayers v. Jones, 211 Ariz. 576, 125 P.3d 396 (Ct. App. Div. 1 2005).

Add after note 94:

Initiative could not be used to enact an ordinance prescribing the minimum future annual budgets for county public safety agencies.[94.50]

[94.50]**Cal.**—Totten v. Board of Supervisors of County of Ventura, 139 Cal. App. 4th 826, 43 Cal. Rptr. 3d 244 (2d Dist. 2006), review denied, (Aug. 16, 2006).

Add after note 100:

Similarly, it has been held that establishment of a procedure for collective bargaining and for arbitration of unresolved issues is an administrative matter not subject to initiative.[100.50]

[100.50]**Okla.**—In re Initiative Petition No. 27 of City of Oklahoma City, 2003 OK 104, 82 P.3d 90, 174 L.R.R.M. (BNA) 2508 (Okla. 2003), quot-

Dr. Osmunson,

With regards to your e-mail below, dated Feb. 22, 2007 and my initial response, dated Feb. 28, 2007. As promised in that initial response I can now provide you with the answer to your third question, (called out in **bold**):

3. Under who's DEA (Drug Enforcement Administration) license does the WSDH dispense fluoride compounds in water?

Our Environmental Health Division provided me with the following: The Washington State Department of Health (DOH) does not dispense fluoride. Rather, the DOH regulates water systems that choose to add fluoride to water. Therefore, DOH does not operate under any DEA license for the dispensing of fluoride

Please let me know if you have any further questions regarding your inquiry.

Vic Colman

Victor Colman, JD Senior Policy Advisor
Division of Community and Family Health,
Office of the Assistant Secretary
Washington State Department of Health
PO Box 47830
Olympia, WA 98504-7830

Tel: 360.236.3721 Cell: 360.561.3299 Fax: 360.664.4500

PUBLIC HEALTH:
Always Working For A Safer and Healthier Washington

From: Colman, Victor (DOH)
Sent: Wednesday, February 28, 2007 2:58 PM
To: 'Bill Osmunson DDS MPH'
Cc: Cooper, Kelly (DOH); Grunenfelder, Gregg (DOH); Aragon, Sofia (DOH); Mosqueda, Teresa (DOH); Hayes, Patty (DOH); Edgin, Jill M (DOH); Stout, Kathy (DOH)
Subject: RE: Public Records Request -- Feb. 22, 2007 -- Initial Response

Dr. Osmunson,

Thank you for your e-mail below, dated Feb. 22, 2007. This e-mail is to acknowledge the receipt of your request for public disclosure. Pursuant to the state laws regarding public records disclosure, I need to either provide you the information requested or give you a reasonable time for our response within five business days.

Let's look at your requests (called out in **bold**) individually:

1. **I have not received confirmation of your receipt of the letter I sent to the Governor requesting a cessation to fluoridation. Did you receive it? (A copy with additional names and slight addition as requested by the NSF.)**

   Yes I did receive a copy of the original letter on February 11, 2007 (and now revised version of the letter) that you provided to the Governor.

2. **I have not received the WSDH position on fluoridated water for infants.**

   While the file attachment that I provided to you on February 1, 2007 (attached again for your reference) did note that a verbal answer was provided to you by Dr. Joseli Alves-Dunkerson, DDS, MPH, MBA, Senior Oral Health Consultant and Supervisor, Maternal and Child Health Oral Health Program, WSDH, you have again requested our "position". The following is a written statement that we hope clarifies our stance on this issue:

   There is no clear evidence that using infant formula from concentrates as the primary source of nutrition increases a child's chances of developing the more severe forms of fluorosis; however, there may be an increased risk for very mild to mild forms. Parents and health providers should weigh the balance between a child's risk for very mild or mild enamel fluorosis and the benefit of fluoride for preventing tooth decay and the need for dental fillings.

   DOH will continue to support community water fluoridation as a sound population-based public health measure. DOH will rely on known national entities like the CDC and EPA to assess the science regarding the use of fluoride in preventing tooth decay while limiting enamel fluorosis, and will modify its recommendations as warranted.

3. **Under who's DEA (Drug Enforcement Administration) license does the WSDH dispense fluoride compounds in water?**

   Our Environmental Health Division is tackling this query and will

provide a response to you no later than Wednesday, March 7, 2007.

So, in summary, I still owe you a response to your third query. Please let me know if you have any questions.

Vic Colman

Victor Colman, JD Senior Policy Advisor
Division of Community and Family Health,
Office of the Assistant Secretary
Washington State Department of Health
PO Box 47830
Olympia, WA 98504-7830

Tel: 360.236.3721 Cell: 360.561.3299 Fax: 360.664.4500

PUBLIC HEALTH:
Always Working For A Safer and Healthier Washington

From: Bill Osmunson DDS MPH [mailto:bill@teachingsmiles.com]
Sent: Thursday, February 22, 2007 7:39 AM
To: Colman, Victor (DOH)
Subject: DEA license

Greetings Victor,

I have not received confirmation of your receipt of the letter I sent to the Governor requesting a cessation to fluoridation. Did you receive it? (A copy with additional names and slight addition as requested by the NSF.)

I have not received the WSDH position on fluoridated water for infants.

Under who's DEA (Drug Enforcement Administration) license does the WSDH dispense fluoride compounds in water?

Bill