

THE LAW OF MUNICIPAL CORPORATIONS

THIRD EDITION

EUGENE McQUILLIN

2009 Cumulative Supplement
Issued in July 2009

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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).

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).

n. 4.

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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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).

n. 12.

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).

n. 13.

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).

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.

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); *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).

n. 5.

Ariz.—*Forszt v. Rodriguez*, 212 Ariz. 263, 130 P.3d 538 (Ct. App. Div. 2 2006).

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); *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.—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

Research References

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).

N.J.—In re Ordinance 04-75, 192 N.J. 446, 931 A.2d 595 (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. 6.

Utah—Mouty v. The Sandy City Recorder, 2005 UT 41, 122 P.3d 521 (Utah 2005).

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. Comm. 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.⁴⁵⁰

⁴⁵⁰N.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 referendum.^{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.

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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).

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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. Comm't. 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 849 (Ct. App. Div. 1 2004), citing this treatise.

Cal.—Pettys 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

³⁵U.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).

³⁶U.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).

³⁷U.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).

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Ohio—State ex rel. Laughlin v. James, 115 Ohio St. 3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (2007).

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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-

THE LAW OF MUNICIPAL CORPORATIONS

THIRD EDITION

EUGENE McQUILLIN

2002 REVISED VOLUME

By the Publisher's Editorial Staff

VOLUME 4

Cite as: **McQuillin Mun Corp § — (3rd Ed)**



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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 ~~6~~108, 108.5

Municipal legislation may be enacted for the most part only by the representative legislative body of a municipal corporation¹ 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

⁷Pa. Com. ex rel. Bagnoni v. Klemm, 499 Pa. 566, 454 A.2d 531 (1982).
[Section 16:47]

¹Colo. 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.

²Ark. 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).

³Cal. 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 bonds¹⁴ is treated in connection with the particular matters to which they relate.¹⁵

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

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

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

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

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

¹²Cal. 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.

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

See §§ 9.24 et seq.

¹⁴See Ch 40.

¹⁵Municipal 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, Initiative 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

(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 363, 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

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.

²Ariz. 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).

³Alaska. 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

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 Env'tl. 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

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 349 (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

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,

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 845, 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 action¹³ where it would displace a legislatively sanctioned mechanism for lo-

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); *Tompson v. Farina*, 120 N.J. 55, 575 A.2d 1363 (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

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

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

²⁰Cal. *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).

²¹Cal. *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).

²²Cal. *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).

²³Cal. *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).

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

²⁵Colo. *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, Initiative and Referendum §§ 7, 8

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

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.

²⁶Okla. 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).

²⁷Ala. Municipality of Anchorage v. Frohne, 568 P.2d 9 (Alaska 1977).

²⁸Cal. 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]

¹U.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); Scrogins 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. 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. Zwerdinger, 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 executive² or administrative action,³ although

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. Zwerdinger, 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.

§ 16:54

MUNICIPAL CORPORATIONS

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

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

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

⁸Nev. *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).

⁹Cal. *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).

¹⁰Cal. *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).

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

¹²Cal. *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

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.

MUNICIPAL CORPORATIONS

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.¹⁵

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. 1968) (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. Zwerdinger*, 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

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 P.2d 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-

²⁰Ark. 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.

²¹Ariz. 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).

²²Ariz. 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).

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

²⁴Ala. 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

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

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, Initiative 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

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

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

³³Cal. *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).

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

[Section 16:55]

¹Ark. *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

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 845, 884 P.2d 1326 (1994); State ex rel. Gray v. Martin, 29 Wash. 2d 799, 189 P.2d 687 (1948).

²Ark. 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.

³Ark. 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

⁴Cal. *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*, 184 Ill. App. 3d 232, 115 Ill. Dec. 489, 517 N.E.2d 1175 (3d Dist. 1987).

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

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

⁷Ark. *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).

⁸Ark. *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).

⁹Ark. *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 affirmed¹¹ and denied¹² 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

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, 118 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

ordinance takes effect, § 15:37.

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

¹⁵Mo. 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).

¹⁶Ohio. 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).

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

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

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

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

²¹Alaska. 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-

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

[Section 16:56]

¹Mich. *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.

²Ark. *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.

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

⁴Colo. *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.

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

⁶U.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).

⁷N.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 zoning¹⁴ and rezoning¹⁵ of land;

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

⁹N.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.

¹⁰Minn. 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).

¹¹U.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).

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

¹³Okla. 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).

¹⁴U.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.

¹⁵Mo. 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

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

¹⁶Ohio. 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).

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

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

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

²⁰Ariz. 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).

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

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

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

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

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

²⁶N.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).

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

²⁸Wash. 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 demotion⁴⁵ of public

²⁹N.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).

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

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

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

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

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

³⁵Or. *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).

³⁶Cal. *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).

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

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

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

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

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

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

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

⁴³Conn. *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

N.E.2d 192 (1948).

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

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

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

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

⁴⁸S.D. Custer City v. Robinson, 79 S.D. 91, 108 N.W.2d 211 (1961).
Bond elections, Ch 40.

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

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

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

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

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

⁵⁴N.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).

⁵⁵Cal. 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).

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

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

⁵⁸Colo. 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 lands⁶⁵ 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

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

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

⁶¹Wash. 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).

⁶²N.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).

⁶³Cal. 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. Zwerdinger, 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).

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

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

⁶⁶Mich. 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).

⁶⁷Mich. 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).

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

⁶⁹Md. 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

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. 283 (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. 399, 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

Submitting franchise to vote of people, Ch 34.

⁸³U.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, 208 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.

⁸⁴Ill. *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. Koble, 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.

⁸⁵Mo. *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, 8 P.2d 778 (1931), quoting this treatise (purchase of equipment for garbage incinerator plant not subject to referendum).

Sunday moving pictures.⁶⁷

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

⁶⁶Cal. 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.

⁶⁷N.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-

⁸⁸Cal. 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).

⁸⁹Ky. Batten v. Hambley, 400 S.W.2d 683 (Ky. 1966).

⁹⁰Mass. 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).

⁹¹Fla. State v. City of St. Petersburg, 106 Fla. 742, 145 So. 175 (1933).

⁹²D.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 firemen⁹⁷ and policemen,⁹⁸ as well as to their appointment, working hours, vacations, and days

⁹³Mo. State ex rel. Sessions v. Bartle, 359 S.W.2d 716 (Mo. 1962) (constitutional requirement construed and applied).

⁹⁴Mo. 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).

⁹⁵Cal. 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, 163 N.J. Super. 423, 403 A.2d 64 (Law Div. 1979) (mayor's salary).

Vote of electors as fixing salaries, §§ 12.174 et seq.

⁹⁶Ohio. 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).

⁹⁷Ga. 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.

⁹⁸Colo. 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

⁹⁹Ky. *City of Newport v. Gugel*, 342 S.W.2d 517 (Ky. 1960).

¹⁰⁰Okla. *Fite v. Lacey*, 1984 OK 83, 691 P.2d 901, 120 L.R.R.M. (BNA) 3017 (Okla. 1984).

¹⁰¹Cal. *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).

¹⁰²N.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).

¹⁰³Ariz. *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,

(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