

Title XVII Chapter 34 Elections

Elections

170.34.50 Elections; Tie Votes

In the case of a tie vote of any of the candidates in either the primary or general election, the County Clerk shall notify such candidates to appear at his office on a given day and hour to determine the same by lot before the canvassing board, and the certificate of nomination or election shall be given accordingly. Notice to appear shall be given by certified mail.

170.34.51 Initiative and Referendum (Refer to State Statute for current law)

1. DEFINITIONS

The powers of initiative and referendum are reserved to the qualified electors of the Municipality by State law. This Article shall govern the use of initiative to enact, and the use of referendum to amend or repeal measures affecting the governance of the Municipality. For purposes of this Article, the definitions set out in this Section, unless the context otherwise requires shall apply.

CIRCULATOR shall mean any person who solicits signatures for an initiative or referendum petition.

CLERK shall mean the Municipal Clerk or the Municipal Official in charge of elections.

GOVERNING BODY shall mean the legislative authority of the Municipality.

MEASURE shall mean an ordinance, charter provision, or resolution which is within the legislative authority of the Governing Body to pass, and which is not excluded from the operation of referendum by the exceptions in Section 12.

MUNICIPALITY shall mean the City of Stanton, Nebraska.

PETITION shall mean a document authorized for circulation pursuant to Section 2, or any copy of such document.

PLACE OF RESIDENCE shall mean the street and number of the residence. If there is no street and number for the residence, the place of residence shall mean the mailing address.

PROSPECTIVE PETITION shall mean a sample document containing the information necessary for a completed petition, including a sample signature sheet, which has not yet been authorized for circulation.

QUALIFIED ELECTORS shall mean all persons registered to vote, at the time the prospective petition is filed, in the jurisdiction governed or to be governed by any measure sought to be enacted by initiative, or altered or repealed by referendum.

RESIDENCE shall mean that place at which a person has established his or her home, where he or she is habitually present, and to which, when he or she departs, he or she intends to return.

SIGNATURE SHEET shall mean a sheet of paper which is part of a petition and which is signed by persons wishing to support the petition effort.

2. PETITIONS, BALLOTS

Before circulating an initiative or referendum petition, the petitioner shall file with the Clerk a prospective petition. The Clerk shall date the prospective petition immediately

upon its receipt. The Clerk shall verify that the prospective petition is in proper form and shall provide a ballot title for the initiative or referendum proposal, as described below. If the prospective petition is in proper form, the Clerk shall authorize the circulation of the petition and such authorization shall be given within three (3) working days from the date the prospective petition was filed. If the form of the prospective petition is incorrect, the Clerk shall, within three (3) working days from the date the prospective petition was filed, inform the petitioner of necessary changes and request that those changes be made. When the requested changes have been made and the revised prospective petition has been submitted to the Clerk in proper form, the Clerk shall authorize the circulation of the petition and such authorization shall be given within two (2) working days from the receipt of the properly revised petition. Verification by the Clerk that the prospective petition is in proper form does not constitute an admission by the Clerk, Governing Body, or Municipality that the measure is subject to referendum or limited referendum or that the measure may be enacted by initiative.

The ballot title of any measure to be initiated or referred shall consist of:

A. A briefly-worded caption by which the measure is commonly known or which accurately summarizes the measure;

B. A briefly-worded question which plainly states the purpose of the measure, and is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

C. A concise and impartial statement, of not more than seventy-five (75) words, of the chief purpose of the measure.

The ballots used when voting on an initiative or referendum proposal shall contain the entire ballot title. Proposals for initiative and referendum shall be submitted on separate ballots and the ballots shall be printed in lower case ten point type, except that the caption shall be in bold face type. All initiative and referendum measures shall be submitted in a nonpartisan manner without indicating or suggesting on the ballot that they have or have not been approved or endorsed by any political party or organization.

3. PETITION FORM

A. The forms designed by the Secretary of State to be used for initiative and referendum petitions shall be made available to the public by the City Clerk, and they shall serve as a guide for individuals preparing prospective petitions. Substantial compliance with initiative and referendum forms is required before authorization to circulate such petition shall be granted by the City Clerk. Chief petitioners or circulators preparing prospective petitions shall be responsible for making copies of the petition for circulation after authorization for circulation has been granted.

B. Each petition presented for signature must be identical to the petition authorized for circulation by the City Clerk. Every petition shall contain the name and place of residence of not more than three persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the municipality potentially affected by the initiative or referendum proposal. Every petition shall contain the caption and the statement specified to be part of the ballot title. When a special election is being requested, such fact shall be stated on every petition.

4. SIGNATURE SHEETS

Every signature sheet shall:

1. Contain the caption required in subdivision A of Section 2 of this Article;

2. Be part of a complete and authorized petition when presented to potential signatories;
3. Provide space for signatories to write their names, residential addresses, and the date of signing; and
4. Contain a statement that anyone falsifying information on a signature sheet shall be subject to penalties provided by law.

No more than twenty-five (25) signatures on each signature sheet shall be counted. In order to be valid, a signature shall be that of an individual registered to vote, at the time of signing, in the jurisdiction governed or to be governed by the measure addressed in the petition. A signature shall include the signatory's full name, his or her place of residence, and the date of signing. No signatory shall use ditto marks as a means of affixing his or her place of residence or date on any petition. A wife shall not use her husband's Christian or given name when she signs a petition and she shall sign her own Christian or given name along with her surname.

5. PETITIONS, AFFIDAVIT

Included in the contents of every petition shall be an affidavit, to be signed by the circulator in the presence of a notary, which states that the circulator is a qualified elector, that each person who signed the petition did so in the presence of the circulator on the date indicated, and that the circulator believes that each signatory was registered to vote in the affected jurisdiction at the time he or she signed the petition and that the circulator believes that each signatory has stated his or her name and place of residence correctly.

6. PETITIONS, NOTIFICATION

A. Signed petitions shall be filed with the Clerk for signature verification. Upon the filing of a petition, and passage of a resolution by the Governing Body, the Municipality and the County Clerk or Election Commissioner of the County in which such Municipality is located may by mutual agreement provide that the County Clerk or Election Commissioner shall ascertain whether the petition is signed by the requisite number of voters. The Municipality shall reimburse the County for any costs incurred by the County Clerk or Election Commissioner. When the verifying official has determined that one hundred (100%) per cent of the necessary signatures required by this Article have been obtained, he or she shall notify the Governing Body of that fact, and shall immediately forward to the Governing Body a copy of the petition.

B. In order for an initiative or referendum proposal to be submitted to the Governing Body and the voters, the necessary signatures shall be on file with the Clerk within six (6) months from the date the prospective petition was authorized for circulation. If the necessary signatures are not obtained by such date, the petition shall be void.

7. FREQUENCY OF OCCURRENCE

The same measure, either in form or in essential substance, may not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once every two (2) years. No attempt to repeal or alter an existing measure or portion of such measure by referendum petition may be made within two (2) years from the last attempt to do the same. Such prohibition shall apply only when the subsequent attempt to repeal or alter is designed to accomplish the same, or essentially the same purpose as the previous attempt.

8. DIRECT VOTE

The Executive Officer and Governing Body of the Municipality may at any time, by resolution, provide for the submission to a direct vote of the electors of any measure pending

before it, passed by it, including an override of any veto, if necessary, or enacted by the electors under this Article and may provide in such resolution that such measure shall be submitted at a special election or the next regularly scheduled primary or general election. Immediately upon the passage of any such resolution for submission, the Clerk shall cause such measure to be submitted to a direct vote of the electors, at the time specified in such resolution and in the manner provided in this Article for submission of measures upon proposals and petitions filed by voters. Such matter shall become law if approved by a majority of the votes cast.

9. ELECTIONS

The Clerk shall call elections under this Article, either at a special election or regularly scheduled primary or general election. He or she shall cause notice of every such election to be printed in one (1) or more newspapers of general circulation in such Municipality at least once not less than thirty (30) days prior to such election and also posted in the office of the Clerk and in at least three (3) conspicuous places in such Municipality at least thirty (30) days prior to such election. The notice shall be substantially as follows:

Notice is hereby given that on Tuesday, the _____ day of _____, 20____, at (identify polling place or precinct) of the Municipality of _____, Nebraska, an election will be held at which there will be submitted to the electors of the Municipality for their approval or rejection, the following measures, propositions, or issues: _____ (naming measures, propositions, or issues), which election will be open at 8:00 a.m. and will continue open until 8:00 p.m., of the same day.

Dated this _____ day of _____ 20____

Clerk of the City / Village of _____, Nebraska

The Clerk shall make available for photocopying a copy in pamphlet form of measures initiated or referred. Such notice provided in this Section shall designate where such a copy in pamphlet form may be obtained.

10. BALLOTS

All ballots for use in special elections under this Article shall be prepared by the Clerk and furnished by the Governing Body, unless the Governing Body contracts with the County for such service, and shall be in form the same as provided by law for election of the Executive Officer and Governing Body of such Municipality. When ordinances under such sections are submitted to the electors at a regularly scheduled primary or general election they shall be placed upon the official ballots as provided in this Article.

11. INITIATIVE

A. The power of initiative allows citizens the right to enact measures affecting the governance of the Municipality. An initiative proposal shall not have as its primary or sole purpose the repeal or modification of existing law except if such repeal or modification is ancillary to and necessary for the adoption and effective operation of the initiative measure.

B. An initiative shall not be effective if the direct or indirect effect of the passage of such initiative measure shall be to repeal or alter an existing law, or portion thereof, which is not subject to referendum or subject only to limited referendum pursuant to section 12.

C. Whenever an initiative petition bearing signatures equal in number to at least fifteen percent (15%) of the qualified electors of the Municipality has been filed with the Clerk and verified, it shall be the duty of the Governing Body to consider passage of the

measure contained in the petition including an override of any veto, if necessary. If the Governing Body fails to pass the measure without amendment, including an override of any veto, if necessary, within thirty (30) days from the date it received notification, the Clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the Municipality. If the Governing Body desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the Municipality, the Governing Body, shall, by resolution, direct the Clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

D. Whenever an initiative petition bearing signatures equal in number to at least twenty percent (20%) of the qualified electors which requests that a special election be called to submit the initiative measure to a vote of the people, has been filed with the Clerk and verified pursuant to section 6, it shall be the duty of the Governing Body to consider passage of the measure contained in the petition including an override of any veto, if necessary. If the Governing Body fails to pass the measure, without amendment, including an override of any veto, if necessary, within thirty (30) days from the date it received notification, the Clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose. The date of such election shall not be less than thirty (30) nor more than sixty (60) days from the date the Governing Body received notification pursuant to section 6.

E. If a majority of voters voting on the Initiative measure shall vote in favor of such measure, it shall become a valid and binding measure of the Municipality thirty (30) days after certification of the election results, unless the Governing Body by resolution orders an earlier effective date or the measure itself provides for a later effective date, which resolution shall not be subject to referendum or limited referendum. A measure passed by such method shall not be amended or repealed except by two-thirds (2/3) majority of the members of the Governing Body. No such attempt to amend or repeal shall be made within one (1) year from the passage of the measure by the electors.

12. REFERENDUM LIMITATIONS

(A) The power of referendum allows citizens the right to repeal or amend existing measures, or portions thereof, affecting the governance of the municipality.

(B) The following measures shall not be subject to referendum or limited referendum:

(1) Measures necessary to carry out contractual obligations including, but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was, or is, subject to referendum or limited referendum or previously approved by a measure adopted prior to July 17, 1982;

(2) Measures relating to any industrial development projects, subsequent to measures giving initial approval to such projects;

(3) Measures adopting proposed budget statements following compliance with procedures set forth in the Nebraska Budget Act;

(4) Measures relating to the immediate preservation of the public peace, health, or safety which have been designated as urgent measures by unanimous vote of those present and voting of the Governing Body and approved by its Executive Officer;

(5) Measures relating to projects for which notice has been given as provided for in division (E) of this section for which a sufficient referendum petition was not filed

within the time limit stated in such notice or which received voter approval after the filing of such petition;

(6) Resolutions directing the Municipal Clerk to cause measures to be submitted to a vote of the people at a special election as provided in Neb. RS 18-2524 and 18-2529;

(7) Resolutions ordering an earlier effective date for measures enacted by initiative as provided in Neb. RS 18-2526;

(8) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by the municipality and which are necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness;

(9) Measures that amend, supplement, change, modify, or repeal a zoning regulation, restriction, or boundary and are subject to protest as provided in Neb. RS 19-905;

(10) Measures relating to personnel issues, including, but not limited to, establishment, modification, or elimination of any personnel position, policy, salary, or benefit and any hiring, promotion, demotion, or termination of personnel; and

(11) Measures relating to matters subject to the provisions of the Municipal Natural Gas System Condemnation Act.

(C) The following measures shall be subject to limited referendum:

(1) Measures in furtherance of a policy of the municipality or relating to projects previously approved by a measure which was subject to referendum or which was enacted by initiative or has been approved by the voters at an election, except that such measures shall not be subject to referendum or limited referendum for a period of one year after any such policy or project was approved at a referendum election, enacted by initiative, or approved by the voters at an election;

(2) Measures relating to the acquisition, construction, installation, improvement, or enlargement, including the financing or refinancing of the costs of public ways, public property, utility systems, and other capital projects and measures giving initial approval for industrial development projects;

(3) Measures setting utility system rates and charges, except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidences of indebtedness, and pay rates and salaries for municipal employees other than the members of the Governing Body and the Executive Officer; and

(4) Measures relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act by the municipality except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidence of indebtedness.

(D) Measures subject to limited referendum shall ordinarily take effect 30 days after their passage by the Governing Body, including an override of any veto, if necessary. Referendum petitions directed at measures subject to limited referendum shall be filed for signature verification pursuant to Neb. RS 18-2518 within 30 days after such measure's passage by the Governing Body, including an override of any veto, if necessary, or after notice is first published pursuant to subdivision (E) (3) of this section. If the necessary number of signatures as provided in Neb. RS 18-2529 or 18-2530 has been obtained within the time limitation, the effectiveness of the measure shall be suspended unless approved by the voters.

(E) For any measure relating to the acquisition, construction, installation, improvement, or enlargement of public ways, public property, utility systems, or other capital projects or any measure relating to any facility or system adopted or enacted pursuant to the Integrated Solid Waste Management Act, the municipality may exempt all subsequent measures relating to the same project from the referendum and limited referendum procedures provided for in this Article by the following procedure:

(1) By holding a public hearing on the project, the time and place of such hearing being published at least once not less than five days prior to the date set for hearing in a newspaper of general circulation within the municipality;

(2) By passage of a measure approving the project, including an override of a veto, if necessary, at a meeting held on any date subsequent to the date of hearing; and

(3) After passage of such measure, including an override of a veto, if necessary, by giving notice as follows:

(a) For those projects for which applicable statutes require an ordinance or resolution of necessity, creating a district or otherwise establishing the project, notice shall be given for such project by including either as part of such ordinance or resolution or as part of any publicized notice concerning such ordinance or resolution a statement that the project as described in the ordinance or resolution is subject to limited referendum for a period of 30 days after the first publication of such notice and that, after such 30 day period, the project and measures related to it will not be subject to any further right of referendum; and

(b) For projects for which applicable statutes do not require an ordinance or resolution of necessity, notice shall be given by publication of a notice concerning such projects stating in general terms the nature of the project and the engineer's estimate of costs of such project and stating that the project described in the notice is subject to limited referendum for a period of 30 days after the first publication of such notice and that, after such 30 day period, the project and measures related to it will not be subject to any further right of referendum. The notice required by this subdivision shall be published in at least one newspaper of general circulation within the municipality and shall be published not later than 15 days after passage by the Governing Body, including an override of a veto, if necessary, of a measure approving the project.

The right of the municipality to hold such a hearing prior to the passage of the measure by the Governing Body and give such notice after passage of such measure by the Governing Body to obtain exemption for any particular project in a manner described in this division is optional, and the municipality shall not be required to hold such a hearing or give such notice for any particular project.

(F) Nothing in divisions (C) and (E) of this section shall be construed as subjecting to limited referendum any measure related to matters subject to the provisions of the Municipal Natural Gas System Condemnation Act.

(G) All measures, except as provided in divisions (B), (C), and (E) of this section, shall be subject to the referendum procedure at any time after such measure has been passed by the Governing Body, including an override of a veto, if necessary, or enacted by the voters by initiative.

13. REFERENDUM, PASSAGE

A. Whenever a referendum petition bearing signatures equal in number to at least fifteen percent (15%) of the qualified electors of the Municipality has been filed with the

Clerk and verified pursuant to section 6, it shall be the duty of the Governing Body to reconsider the measure or portion of such measure which is the object of the referendum. If the Governing Body fails to repeal or amend the measure or portion thereof in the manner proposed by the referendum, including an override of any veto, if necessary, within thirty (30) days from the date the Governing Body receives notification pursuant to section 6, the Clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the Municipality. If the Governing Body desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the Municipality the Governing Body shall, by resolution, direct the Clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

B. Whenever a referendum petition bearing signatures equal in number to at least twenty percent (20%) of the qualified voters of the Municipality which requests that a special election be called to submit the referendum measure to a vote of the people, has been filed with the Clerk and verified, it shall be the duty of the Governing Body to reconsider the measure or portion of such measure which is the object of the referendum. If the Governing Body fails to repeal or amend the measure or portion thereof, in the manner proposed by the referendum, including an override of any veto, if necessary, the Clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose within thirty (30) days from the date the Governing Body received notification. The date of such special election shall not be less than thirty (30) nor more than sixty (60) days from the date the Governing Body received notification.

C. If a majority of the electors voting on the referendum measure shall vote in favor of such measure, the law subject to the referendum shall be repealed or amended. A measure repealed or amended by referendum shall not be reenacted or returned to its original form except by a two-thirds (2/3) majority of the members of the Governing Body. No such attempt to reenact or return the measure to its original form shall be made within one (1) year of the repeal or amendment of the measure by the electors. If the referendum measure does not receive a majority vote, the ordinance shall immediately become effective or remain in effect.

14. VIOLATIONS, PENALTIES

A. Whoever knowingly or willfully makes a false affidavit or takes a false oath regarding the qualifications of any person to sign petitions under sections 18-2501 through 18-2531 RS Neb. shall be guilty of a Class I misdemeanor with a limit of three hundred dollars (\$300.00) on the fine.

B. Whoever falsely makes or willfully destroys a petition or any part thereof, or signs a false name thereto, or signs or files any petition knowing the same or any part thereof to be falsely made, or suppresses any petition, or any part thereof, which has been duly filed, pursuant to sections 18-2501 through 18-2531 RS Neb. shall be guilty of a Class I misdemeanor with a limit of five hundred dollars (\$500.00) on the fine.

C. Whoever signs any petition under sections 18-2501 through 18-2531 RS Neb. knowing that he or she is not a registered voter in the place where such petition is made, aids or abets any other person in doing any of the acts mentioned in this section, bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such petition, or engages in any deceptive practice intended to induce any person to sign

a petition, shall be guilty of a Class I misdemeanor with a limit of three hundred dollars (\$300.00) on the fine.

D. Any Clerk who willfully refuses to comply with the provisions of sections 18-2501 through 18-2531 RS Neb. or who willfully causes unreasonable delay in the execution of his or her duties under such sections shall be guilty of a Class I misdemeanor but imprisonment shall not be included as part of the punishment.

15. APPLICABILITY

The provisions of the statutes of the State of Nebraska relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on ordinances by the electors pursuant to this Article.

Nothing in this Article shall apply to procedures for initiatives or referendums provided in Nebraska Revised Statutes sections 18-412 and 18-412.02.

16. DECLARATORY JUDGMENT

A. The city or any chief petitioner may seek a declaratory judgment regarding any questions arising under this Article, as it may be from time to time amended, including, but not limited to, determining whether a measure is subject to referendum or limited referendum or whether a measure may be enacted by initiative. If a chief petitioner seeks a declaratory judgment, the city shall be served by personal, residence or certified mail service upon the chief executive officer or City Clerk. If the city seeks a declaratory judgment, only the chief petitioner or chief petitioners shall be required to be served.

B. Any action brought for declaratory judgment for purposes of determining whether a measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, may be filed in the district court at any time after the filing of a referendum or initiative petition with the City Clerk for signature verification until 40 days from the date the City Council received notification from the verifying official that the necessary signatures have been obtained. If the city does not bring an action for declaratory judgment to determine whether the measure is subject to limited referendum or referendum, or whether the measure may be enacted by initiative, until after it has received such notification, it shall be required to proceed with the initiative or referendum election in accordance with the provisions of this Article. If the city does file such an action prior to receiving such notification, it shall not be required to proceed to hold such election until a final decision has been rendered in the action.

C. Any action for a declaratory judgment shall be governed generally by Neb. RS 25-21,149 through 25-21,164, except that only the city and each chief petitioner shall be required to be made parties. The city, City Clerk, City Council, or any of the city's officers shall be entitled to rely on any order rendered by the court in any such proceeding. Any action brought for declaratory judgment pursuant to this section shall be given priority in scheduling hearings and in disposition as determined by the court. When an action is brought to determine whether the measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, a decision shall be rendered by the court no later than five days prior to the election.

D. The provisions of this section relating to declaratory judgments shall not be construed as limiting, by construed as supplemental and additional to other rights and remedies conferred by law.