



King County

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**King County Charter Review Commission
Governmental Structure Subcommittee
Briefing Paper – Initiative Process
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Problem Statement

Is the current initiative process for King County broken? From the Charter Review Commission's public outreach process, many citizens argued that there is a lack of clarity in the current King County Charter about whether:

- 1) Citizens should be allowed to propose charter amendments through a citizen initiative process and if so:
- 2) Whether the signature requirements for charter amendments by initiative should be raised to a higher level than the current levels
- 3) Whether the size of the majority needed for passage should be different for charter amendment initiatives than for other initiatives.

As we analyze the characteristics of the initiative process from other home rule charters in Washington State, we should continually revisit these questions to understand if a proposed charter amendment will clarify these issues.

Historical Background

In 1912, Washington State became one of the first states to adopt the initiative and referendum process¹, thus securing the rights of citizens to make and remake their laws. For nearly 100 years, the initiative and referendum process in Washington State has been the critical tool to check the power their legislature.

The definition of an initiative as it is defined by Washington State is the process that allows the electorate to petition and place proposed legislation on the ballot if they are dissatisfied with certain laws or feel that new laws are needed.

The referendum allows citizens, through the petition process, to refer acts of the legislature to the ballot before they become law. The referendum also permits the legislature itself to refer proposed legislation to the electorate for approval or rejection.

Twenty-four states and countless numbers of cities and counties currently allow citizens to gather signatures on petitions to put a proposed new law on the ballot for a public vote (the initiative process). Citizen referendums, in which voters recall a law passed by legislators, are also permitted in these states.

Although the initiative process differs from jurisdiction to jurisdiction, there are certain aspects of the process that are common to all. The five basic steps to any initiative process are:

1. Preliminary filing of a proposed initiative with a designated government official
2. Review of the initiative for compliance with statutory requirements prior to circulation
3. Circulation of the petition to obtain a required number of signatures
4. Submission of the petition to the elections official for verification of the signatures
5. Placement of the initiative on the ballot and subsequent vote.

The initiative and referendum process guarantees Washington State citizens the right to legislate. Sponsors of initiative and referendum measures must, however, obtain a substantial number of petition signatures from registered voters in order to put their measures on the ballot.

Here in King County, voters are able to make laws (ordinances) directly through the initiative process. The County Charter, however, provides only for the County Council to place proposed charter amendments onto the ballot. Believing that the charter was a fundamental document that should not be changed easily, the Freeholders specifically decided not to permit the charter to be amended by citizen initiative. Other Washington county charters, all of which provide for an elected charter review commission, permit those commissions to directly place charter amendments on the ballot.

¹ http://www.secstate.wa.gov/elections/pdf/Filing_Initiative_and_Referenda_Manual_2005-2008.pdf

The 1996-1997 Charter Review Commission's top priority amendment was to revise the Charter to afford citizens the right to propose charter amendments through the citizen initiative process.² Many citizens felt that this single measure would do more to make King County government citizen-friendly than any other possible change. The Commission reasoned that the Charter was created and approved by the voters of King County and should therefore be subject to amendment by the voters even if the County Council disagreed. The Commission noted that citizens in all other Home Rule Counties enjoyed this right.

At the time, Commission members recognized the potential for the initiative process to be used frivolously or, as has been the case statewide, to result in language that is flawed. To address this concern, the Commission recommended a 20 percent threshold for the required number of signatures to validate an initiative proposing a charter amendment. In addition, the Commission recommended that the County Council be permitted to place a substitute amendment on the ballot at the same time that a citizen-led initiative went before the voters.

In the end, this amendment did not make it to the ballot.

Council Reduction from 13-9 members

The County's citizen initiative process changed during 2003. The King County Corrections Guild, angered by a 2002 Council budget decision cutting jobs at the county jails, sponsored an initiative to reduce the size of the council from thirteen to nine members (I-18). King County Prosecuting Attorney Norm Maleng (1938-2007) initially obtained an injunction against I-18 in superior court, arguing that the County Charter could not be amended by initiative.

The Guild then appealed to the state Supreme Court, and to the surprise of many, the Court unanimously ruled that the initiative mechanism could be used in King County to revise the Charter. The September 25, 2003, ruling came too late for I-18 to appear on that November's ballot. The initiative was, however, placed before the voters and approved in the 2004 election. This set the stage for a controversial redistricting process.

At the time the King County Corrections Guild's initiative to reduce the size of the council was presented, the commonly held view was that the charter gave the power to place charter amendments on the ballot solely to the council. In order for citizens to directly amend the charter, a charter amendment would be required to give them power. The council consistently rejected this approach. Consequently, it was somewhat bewildering to many of the freeholders when the King County Superior Court was overruled by the Washington State Supreme Court in September 2003.

Current Opinion

Since the Washington State Supreme Court ruling allowing charter amendment by initiative, there has been considerable analysis as to how such an initiative should be implemented.

Currently, the King County Charter states:

² Final Report and Recommendations, June 1997, 1996-97 King County Charter Review Commission
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Ordinances except ordinances providing for the compensation or working conditions of county employees may be proposed by filing with county council petitions bearing signatures of registered voters of the county equal in number to not less than ten percent of the votes cast in the county for the office of county executive at the last preceding election for county executive. (Sections 230.50)

There is no parallel detail in the Charter explaining how the initiative process would be carried out for potential charter amendments.

Several citizens, organizations, and elected officials have commented on the initiative process and have requested revisions to clarify whether and how charter amendment initiatives should proceed, given the Washington State Supreme Court ruling. Overall, we've received eight responses on the process. A summary of the responses follows:

ORGANIZATION/ INDIVIDUAL	FAVORS INITIATIVE PROCESS	PARTISANSHIP PROPOSAL COMMENTS
King County Councilmember, Larry Phillips	No	Opposes allowing the charter to be amended by initiative – Favors a referendum section in our charter but if it is allowed, it should not simply track the signature requirements applicable to ordinary initiatives
King County Democrats (via Suzie Sheary)	No	The charter should not be amended by initiative; the charter should be difficult to amend
Elaine Phelps (citizen)	Yes	The signature threshold to amend the charter should be as high as the threshold to amend the state constitution
King County Executive, Ron Sims	Yes	Create a clear charter amendment initiative process
Municipal League of King County	Yes	Citizen initiative process needs follow-up to clarify implementation
Richard Tait (citizen)	Yes	Avoid attempts to remove the initiative process from the King County Council's decision-making process
Sandra Cohen (citizen)	Yes	The Charter should be amended by initiative, but it should be difficult to amend
Suburban Cities Association	Yes	Citizen initiative process needs follow-up to clarify implementation

Most of the responses favor allowing citizens to amend the charter by initiative, but many people would like to see more clarifying language regarding the process and the signature threshold.

Analysis of Initiative Process from other Washington State Home Rule Charters³

All home rule charters counties have initiative processes. But King County is the only County that did not allow citizens to amend the charter by initiative, until the Washington State Supreme Court ruling. Home Rule Charters in Washington State outline specific rules for a countywide process of initiatives and referendums. This process is reserved as a fundamental power available to the people to enable them to affect policy within their county. In Washington State, the initiative process is available only to counties governed by a Home Rule Charter

In each of the home rule counties, the initiative process requires that a specified percentage of voters sign an initiative petition in order for it to be placed on the ballot. If the initiative petition receives sufficient valid signatures, the citizens vote on the initiative and, if approved by a majority of the voters, it becomes law. Often the new law cannot be modified by the legislative body for a period of time, typically two (2) years.

All initiative and referendum processes are bound to strict deadlines and requirements relative to the number of signatures needed, etc.

Each of the six charter counties in Washington State has established a detailed process for implementing the initiative process. Factors to consider with the initiative process include:

- *Initiative Limitations* – Describes funding mechanisms for each initiative
- *Initiative Procedures* – Covers eligibility on filing, time it takes to process initiative, limitations on words, length of time petitioner has to collect signatures, length of time for verification of signatures,
- *Filing of Petition* – Explains signatures threshold requirement to get initiative onto the ballot

While initiatives are powerful tools reserved for the citizens' toolbox, it is clear that this power can be easily abused. A delicate balance must be achieved between providing a system that is navigable to the ordinary citizen while protecting the stability and functionality needed by the county. Each of the six Home Rule Charters in the Washington State has formulated its own idea on this issue.

Initiative Process for Washington State

As noted above, in Washington State, only charter counties can have an initiative process. All laws proposed by initiative must comply with both State and Federal Constitutions. In addition, the county can impose additional restrictions on the content of initiatives such as prohibiting unfunded mandates, modifying taxes, redistricting or overturning land use decisions.

Central to the initiative process is getting the required number of valid signatures. Although the requirements and formulas may differ, all states set the signature threshold at some percentage of the voting public, rather than absolute number of signatures. Some states require that the number

³ http://www.co.san-juan.wa.us/freeholders/initiative_referendum.shtml

of signatures match predetermined percentage of registered voters, for the State. Others require a percentage of a previous vote for a designated office to qualify. Signature thresholds vary from a high of fifteen percent of qualified voters based on votes cast in the last general election in Wyoming to a low of two percent of the State's resident population in North Dakota.

Here in Washington State, Initiative petitions must bear a number of legal voter signatures equal to or in excess of eight percent of the total number of votes cast for the office of Governor at the last regular state gubernatorial election. Based on the gubernatorial vote at the 2004 state general election, the following signature requirement will be in effect through the year 2008 – Initiatives to the people or to the legislature require 224,880 valid signatures.

Initiative Process for Other Washington State Home Rule Counties

Each of the six charter counties in Washington State has established a detailed process for implementing the initiative process. The table on the next page is a summary of each Home Rule County in Washington State and their corresponding signature threshold.

Citizen Initiative Signature Threshold

JURISDICTION		
Washington State – Counties with Home Rule Charter (6)	Initiative Process in Charter	Signature Threshold %
Clallam ⁴	Yes	10% (Last gubernatorial election) 20% for charter amendments
King ⁵	Yes	10% (Last King County Executive Election) No provisions for charter amendment initiatives
Pierce ⁶	Yes	10% (Last Pierce County Executive Election) 20% for charter amendments
San Juan ⁷	Yes	15% (Last gubernatorial election) 15% for charter amendments
Snohomish ⁸	Yes	7% (Last gubernatorial election) 20 % for charter amendments
Whatcom ⁹	Yes	15% (Last general election) 20% for charter amendments

⁴ http://www.clallam.net/Board/html/board_charter.htm

⁵ <http://www.metrokc.gov/exec/charter/charter.aspx>

⁶ <http://www.co.pierce.wa.us/pc/abtus/ourorg/council/charter.htm>

⁷ www.co.san-juan.wa.us/freeholders/Final.11082005.pdf

⁸ <http://www.co.snohomish.wa.us/executiv/charter.htm>

⁹ <http://www.co.whatcom.wa.us/council/code/charter/charter.jsp>

King County is the only home rule county in Washington State that does not explicitly permit charter amendment by initiative. Absent such specificity, the state Supreme Court ruled that charter amendment initiatives in King County are subject to the same limitations as common ordinance initiatives. It is also interesting to observe how wide the variation is between the counties in the signature thresholds they employ. Based on this information, examining the signature threshold for charter amendment initiatives in King County might be a wise endeavor.

In addition, unless it is decided that a recommendation should be made to eliminate the current charter amendment initiative process, the Commission may want consider charter clarifications to eliminate the associated unnecessary confusion that exists under the current charter language.

V – Final Analysis

The citizen and referendum process is a powerful tool that is typically supported by the people. However, like all aspects of governance, it must be constantly monitored to make certain that it operates fairly, effectively, and accurately. If King County decides to continue the initiative process for charter amendments, it may be prudent for the county to explicitly spell out the procedures unique to such actions as the other five counties in Washington State with home rule charters have done.

Below is a table that may suggest some options and the pros and cons with those options as you consider this issue.

OPTION	PROS	CONS
No Action	Easy to do	Does not address the lack of clarity and signature threshold issue with the current citizen initiative process for charter amendments
Do not permit Citizen Initiatives for Charter Amendments	Charter is not subjected to the whims of the people who are inclined to make capricious changes	Does not give people the opportunity to exercise their right to provide another check on government
Allow citizen initiatives for charter amendments but maintain current level of signature threshold	Allows people a voice in the legislative process	Might be too easy to get charter amendments onto the ballot subjecting the charter to capricious changes which can corrupt its integrity as a timeless document
Allow citizen initiatives for charter amendments but raise current level of signature threshold	Allows people a voice in the legislative process with a higher signature threshold	Might be too hard to get charter amendments onto the ballot

Respectfully submitted by Mark Yango

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