

# I&R in American Cities: Basic Patterns

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This article was published as Chapter 3 in the *Initiative and Referendum Almanac*,  
by M. Dane Waters, Carolina Academic Press, 2003.

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\* Please contact the author at [matsusak@rcf.usc.edu](mailto:matsusak@rcf.usc.edu). I would like to thank Sebia Clark of ICMA for speedy responses to my numerous inquiries, and Natalia Moskvitina for excellent research assistance.

## Introduction

The bright glare of statewide ballot propositions sometimes makes the local initiative and referendum (I&R) process seem almost invisible. Yet far more Americans have access to I&R in their local government than have access in their state government.<sup>1</sup> The purpose of this article is to try to pull the local I&R process out of the shadows by providing some information on its availability in American cities.

I begin with a detailed discussion of I&R provisions in the 20 largest American cities. After this, basic patterns across all (or substantially all) municipalities in the United States are described using survey data collected by the International City/County Management Association (ICMA). In addition to providing a broad overview of current I&R provisions in cities, I identify some patterns that have not been explicitly noted before, and that seem worthy of further investigation by scholars.<sup>2</sup>

## Initiative and Referendum in the Largest Cities

Table 1 reports the initiative and referendum provisions of the 20 largest American cities (according to the 2000 Census). The provisions were identified by consulting city charters, city codes, state constitutions, state codes, city web pages, and by phone and email communications with city clerks.

To define terms, the “initiative” is a process by which citizens can place a *new* law before the electorate by collecting a given number of signatures from fellow citizens. In effect, the

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<sup>1</sup> Ballpark figures for 1986 are that 41 percent lived in states with statewide initiatives while 71 percent lived in cities with the initiative.

<sup>2</sup> Some of this information is drawn from my book, *For the Many or the Few: How the Initiative Process Changes American Government* (currently in manuscript form only), which provides additional historical background, and a detailed analysis of the initiative’s effect on government policy. For additional information about local I&R, see David D. Schmidt, *Citizen Lawmakers: The Ballot Initiative Revolution*, Philadelphia, PA: Temple University Press, 1991, and various issues of *Municipal Yearbook*, published by the International City/Council Management Association. Both sources are valuable, but appear to contain some errors.

initiative allows voters to pass specific laws without involving their elected representatives. The “referendum” is process whereby an *existing* law is approved or rejected by vote of the electorate. Most cities use the term “initiative” in the same way, but “referendum” is used in a variety of different ways (see below).

Initiatives can allow voters to propose charter amendments or municipal ordinances. As can be seen, 12 cities allow citizens to initiate both charter amendments and ordinances, 3 allow only charter amendments, and 5 do not provide for either type of initiative. In most cases, the legal authority for ordinance initiatives can be found in the city charter, while amendment initiatives are provided in the state constitution or statutes.

In order to qualify a measure for the ballot, petitioners must collect a predetermined number of signatures. The signature requirement is sometimes stated as an absolute number (such as 50,000 in New York) but more often as a percentage (of registered voters, of votes cast at the previous mayoral election, and so on). In most cases, the petitioner must collect the necessary signatures within a fixed amount of time, typically two or three months.

Once the signatures are collected, the petition is submitted to the city’s election official, typically the city clerk, for verification. If an ordinance initiative is determined to have enough signatures, the petition is then submitted to the city council. The council has the option to approve the measure without modification. If the council declines to approve the measure or it is a charter amendment, the proposal goes before the voters and becomes law if it receives a majority of the votes.

Some cities restrict the topics that can be addressed by initiatives. For example, New York limits initiatives to charter amendments that pertain to the “manner of voting” or that abolish or create offices. San Antonio and Detroit do not allow initiatives to appropriate money or to levy taxes. But in most cases, the petitioners have a free hand. We would expect that in cities with charter initiatives but not ordinance initiatives, petitioners would use the initiative process to write substantive law into the charter.

Twelve cities also allow referendums. A referendum allows citizens to challenge ordinances and charter amendments that have been approved by the city council. To challenge a measure, a petitioner must collect a given number of signatures within a certain amount of time after the measure has been passed. For example, in San Diego a referendum can be called if petitioners collect the signatures of 5 percent of registered voters within 30 days of a measure

being approved. If the signature threshold is met, the council usually has the option to rescind its measure. If the council refuses, the measure is put before the voters and if fewer than half support it, the measure does not go into effect.<sup>3</sup>

Two things are perhaps worth noting about I&R in the largest cities. First, I&R is the rule not the exception. Second, provisions for I&R vary considerably across cities. The observation that a city has the initiative gives only a partial description of its practices.

### **The ICMA Form of Government Survey**

The next step is to look at I&R availability in the thousands of other (smaller) cities in the United States. There is nothing conceptually difficult in calculating the numbers that follow. The hard part is assembling the raw data because there is no central clearinghouse that one can consult to determine the government of any given city. The best starting point appears to be the Form of Government surveys conducted by the International City/County Management Association (ICMA) at five-year intervals beginning in 1981. These surveys include a bit less than half of all cities in the country. The ICMA is a professional organization for administrators of cities, counties, and other local governments. The survey, which contains roughly 40 questions, is distributed to city clerks across the country. As far as I am aware, no attempt is made to verify the accuracy of the responses, and of course, many cities do not respond and are therefore omitted from the survey. Each survey contains about 4,700 cities.

While these surveys contain quite a bit of valuable information, they have their limitations, and the reader should be aware of them. There are two main weaknesses: the numbers are difficult to compare over time, and the information on referendums is difficult to interpret.

Table 2 reports the text of the relevant survey questions, and indicates the proportion of responses. Consider first the issue of comparability over time. The initiative question is essentially the same in all four surveys, which is good. However, in 1981 and 1986, the survey

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<sup>3</sup> Other processes are sometimes referred to as “referendums.” For example, the city council may pass a charter amendment and send it to the voters for approval, sometimes called a “legislative referendum.” Or the council may vote to issue debt, and send the proposal to the voters for approval (a “bond referendum”).

gives the respondent the choice of indicating “yes” or “no” to the initiative question while in 1991 and 1996 there is only the option to indicate “yes.” The problem is the large number of non-responses in 1981 and 1986. Should these be considered “no” responses, that is, the city does not have the initiative? Or was the question skipped for some other reason? As a practical matter, what I do below is discard the “no response” cities from the analysis in 1981 and 1986 but count “no response” as “no initiative” in 1991 and 1996. This is the most literal way to interpret the question, but there is no guarantee that the city clerks who filled out the surveys took this approach. None of this causes any significant problems when looking at patterns for a given year as long as the precise nature of the questions asked is kept in mind. But it does make comparisons across years tricky. As far as time trends, the only comparable number is the “yes” response, and this is very close to 40 percent in all three samples. The natural conclusion is that there has not been much of a change over time in the availability of the initiative.

A more severe problem concerns the referendum question. The question asked in 1981 defines the referendum rather broadly and could even be taken to include the initiative. Since we have no idea how the respondents interpreted this question, the responses seem almost worthless. In 1986 and 1991, the survey asked about two kinds of referendums. However, in one case (4.b in 1986 and 7.2 in 1991) the referendum is defined so generally that it could include the initiative or any other type of referendum. “Petition or Protest Referendum” (4.d in 1986 and 7.4 in 1991) corresponds more closely to a petition referendum as defined for Table 1. However, the question seems to exclude votes on charter amendments. It also says clearly that voters can “delay” a measure but does not explicitly state that they can prevent it from taking effect, which would seem to allow non-binding referendums into this category. In 1996, yet another distinction was introduced between binding and non-binding referendums. Since the respondents were asked about several different kinds of referendums, one definition of which was subsumed in the others, there is also the issue of exactly how they interpreted this. These problems undermine the strength of any interpretation that could be drawn from these questions. As a result, I do not attempt to describe the basic patterns of referendums, and restrict my consideration to initiatives.<sup>4</sup>

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<sup>4</sup> These difficulties are accentuated by the fact that city clerks often do not even know which I&R provisions are available in their city, something I discovered when trying to collect the information for Table 1.

## Basic Patterns

With the various caveats in mind, I now present some basic patterns. Table 3 reports the percentage cities in which the initiative is available. The percentage ranges from a high of 51.0 percent in 1981 to a low of 36.9 percent in 1991. Remember that the relatively low numbers in 1991 and 1996 are probably artifacts of the way the question was asked. In any event, assuming that the sample is fairly representative, the actual number of American cities with the initiative is somewhere between one-third and one-half.<sup>5</sup>

A second way to view availability of the initiative is in terms of the number of citizens with access to it. It turns out that the initiative is more common in large than small cities, so that the percentage of cities with the initiative is less than the percentage of citizens with the initiative. The percent of the (sample) population that has an initiative available is between 61 to 71 percent.<sup>6</sup> Thus, the numbers suggest that a significant majority of Americans have governments with initiatives.

Table 3 also calculates the availability numbers separately for cities located in initiative states (that is, states that provide the initiative at the state level) and those in non-initiative states. As can be seen, cities are about 40 percent more likely to have the initiative if they are in initiative than non-initiative states.

The numbers in Table 3 allow us to calculate the fraction of the population that has the initiative available at either the state or city level. To do this, we add the number of people residing in initiative states to the number residing in non-initiative states but in initiative cities,

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<sup>5</sup> My numbers for 1996 are almost 20 percent less than reported in the *Municipal Yearbook*, 1998. *Municipal Yearbook* is a publication of the ICMA and its numbers are based on the Form of Government Survey. The reason for the difference is that in the *Municipal Yearbook*, a city that did not check any of the boxes in question 5 was deleted from the calculations. I retain these cities in my calculations, and count them as not having the initiative. Since the questionnaire instructs respondents without the initiative not to check the box, it seems strange to delete these observations instead of putting them in the “no initiative category.” I believe this problem causes significant overstatement of initiative availability in all the tables reported in the *Municipal Yearbook*.

<sup>6</sup> Population numbers from the Census Bureau’s *County and City Data Book* were linked to the ICMA for these calculations. Some observations were lost if a link could not be established.

and divide by the total number of people.<sup>7</sup> The percentages are reported in the last row of Table 3. The numbers reveal that almost three-quarters of the population have the initiative available at either the state or local level. This stands in contrast to the conventional view that the initiative is an exotic and unusual instrument in the American political landscape. In fact, it is the norm—only about one quarter of the population does not have the initiative available at some level of government (again, assuming that the sample is representative).

Table 4 reports availability of the initiative by Census region. The initiative is not a stranger to any part of the country, and it is extremely popular in the west.

Table 5 reports availability of the initiative by city size. The striking pattern is the almost uniform increase in initiative availability as city population increases. I chose the size divisions in an ad hoc manner, but the basic pattern is robust to other divisions. Why this should be is something of a mystery, and would seem to be a topic worthy of further investigation. I offer here a speculative explanation: perhaps citizens find it more difficult to monitor and control their representatives as a city grows. As the agency problems associated with weak monitoring become more severe, they find the initiative more useful. This explanation, if correct, suggests that a primary function of the initiative is to allow voters a way to override their representatives when the normal electoral mechanisms lose effectiveness.

## **Summary**

This article reports some basic patterns on initiative availability in American cities in 1981, 1986, 1991, and 1996 based on the ICMA Form of Government Surveys. These surveys cover 4,552 to 4,967 cities, towns, and villages, in which live 90 to 120 million people. This boils down to coverage of about half of the country. Here are the main results.

- Most large cities provide for the initiative, including 15 of the 20 largest.

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<sup>7</sup> These numbers are biased upward a bit because some people do not live in cities. However, we are undercounting overall initiative access by ignoring county initiatives.

- One-third to one-half of American cities provide for initiatives.
- Approximately 61 to 71 percent of citizens have the initiative available in their cities.
- Almost 75 percent of citizens have either state or local initiatives available.
- Large cities are more likely to have the initiative than small cities.



**Table 1. Initiative and Referendum Provisions in the 20 Largest Cities, 2000**

	<i>Initiative</i>				<i>Referendum</i>		
	<i>Type available: A=Charter amendment; O=Ordinance</i>	<i>Signatures required</i>	<i>Circulation period</i>	<i>Prohibited subjects</i>	<i>Signatures required</i>	<i>Days</i>	<i>Source</i>
1. New York, NY	A	50,000	120	Anything but changes in "manner of voting" and offices available	...	...	Charter § 40
2. Los Angeles, CA	A, O	15% <sup>m</sup>	A=200, O=120	...	10% <sup>m</sup>	30	Charter § 450-455, 460-464; CA Elections Code Div. 9 Ch. 3
3. Chicago, IL	...	...	...	...	...	...	...
4. Houston, TX	A, O	A=20,000, O=15%*	...	...	10% <sup>m</sup>	30	Charter VII-b, § 1-3, TX Local Govt. Code 9.004
5. Philadelphia, PA	...	...	...	...	...	...	...
6. Phoenix, AZ	A, O	15% <sup>m</sup>	6 months	...	10% <sup>m</sup>	30	City Code XV, XVI; AZ Constitution IV Part 1 § 1(8), AZ Stats. 19-141 to 19-143
7. San Diego, CA	A, O	A=15%, O=10%	A=200, O=180	...	5%	30	Charter § 23; City Code Art. 2 Divs. 10, 11, 28; CA Elections Code Div. 9 Ch. 3
8. Dallas, TX	A, O	A=20,000, O=10%	O=60	...	...	...	Charter Ch. XVIII § 11-15; TX Local Govt. Code 9.004
9. San Antonio, TX	A, O	A=20,000, O=10%	...	Appropriations, tax levies, franchises, utility rates, zoning	10%	40	Charter IV § 34-44; TX Local Govt. Code 9.004

10. Detroit, MI	A, O	A=5%, O=3% <sup>m</sup>	A=1 year, O=6 months	Appropriations	3% <sup>m</sup>	30	Charter Art. 12; MI Statutes 117.21-117.25
11. San Jose, CA	A, O	A=15%, O=5%	A=200, O=180	...	8%	30	City Charter § 1603; CA Elections Code Div. 9 Ch. 3
12. Indianapolis, IN	...	...	...	...	...	...	...
13. San Francisco, CA	A, O	A=10%, O=5% <sup>m</sup>	A=200, O=180	...	10% <sup>m*</sup>	30	Charter Art. 14; CA Elections Code Div. 9 Ch. 3
14. Jacksonville, FL	A	5%	...	...	...	...	Charter § 18.05
15. Columbus, OH	A, O	A=10%, O=5%	...	...	5%	30	Charter § 41-56, OH Constitution XVIII § 9
16. Austin, TX	A, O	A=20,000, O=10%	...	Appropriations, tax levies	10%	*	Charter Art. IV; TX Local Govt. Code 9.004
17. Baltimore, MD	A	10,000	...	...	...	...	MD Constitution Art. XI-A
18. Memphis, TN	...	...	...	...	10%	...	TN Code 6-53-105
19. Milwaukee, WI	A, O	15% <sup>*</sup>	60	...	7% <sup>*</sup>	60	WI Statutes 9.20, 66.0101
20. Boston, MA	...	...	...	...	...	...	...

*Notes.* The information was collected from city charters, municipal code, state constitutions, state statutes, city web pages, and communications with city clerks. Cities are ranked by population according the 2000 census. Asterisks mean that more detailed information in presented below.

*Type available:* Indicates if the initiative can be used to amend the city charter or create municipal ordinances. If blank, then the city does not provide any form of the initiative. When an initiative proposing an ordinance qualifies for the ballot, the city council (or equivalent) has the option to approve the measure without sending it to the voters, except in San Francisco.

*Signatures required:* number of signatures required to qualify a measure for the ballot, expressed either as an absolute number or as a percentage of registered voters (except when noted with a superscript “m,” in which case the percentage is in terms of the number of votes cast in the previous mayoral election.) In Houston, the percentage for an ordinance is in terms of the number of votes cast in the preceding Democratic primary for the nomination of mayor and commissioners. In Milwaukee, the percentage is in terms of the number of votes cast in the preceding gubernatorial election. In San Francisco, the signature requirement for a referendum on an ordinance granting a franchise is 3 percent.

*Circulation period:* how much time is allowed to collect signatures. The numbers are given in days, except where noted. When no limit on the circulation period could be found, the entry is left blank.

*Restricted subjects:* proposals that may not appear as initiatives. Also, initiative law is usually interpreted as prohibiting proposals that are “administrative” rather than “legislative” in character.

*Days:* how much time is allowed to collect signatures. The numbers are given in days beginning with the day the ordinance is approved. In Milwaukee, the signatures must be collected before the ordinance goes into effect.

**Table 2. ICMA Survey Questions Pertaining to Initiative and Referendum, 1981, 1986, 1991**

Questions as they appear in the survey	Responses
<u>1981 Survey (N = 4,761)</u>	
3. Does your municipality have provision for:	
b. Initiative (the process permitting citizens to put proposed charter changes or ordinances on the ballot independent of the action of the legislative body) YES <input type="checkbox"/> NO <input type="checkbox"/>	Yes = 40% No = 38% NR = 22%
c. Referendum (the process whereby council-proposed charter changes or ordinances are placed on the ballot) YES <input type="checkbox"/> NO <input type="checkbox"/>	Yes = 63% No = 20% NR = 17%
<u>1986 Survey (N = 4,630)</u>	
4. Does your municipality have provision for:	
a. Initiative (the process permitting citizens to put proposed charter changes or ordinances on the ballot independent of the action of the legislative body) YES <input type="checkbox"/> NO <input type="checkbox"/>	Yes = 42% No = 42% NR = 16%
b. Referendum (the process whereby council-proposed charter changes or ordinances are placed on the ballot) YES <input type="checkbox"/> NO <input type="checkbox"/>	Yes = 69% No = 20% NR = 11%
d. Petition or Protest Referendum (the process allowing voters to delay enactment of a local ordinance or by-law until a referendum is held) YES <input type="checkbox"/> NO <input type="checkbox"/>	Yes = 33% No = 45% NR = 23%
<u>1991 Survey (N = 4,967)</u>	
7. Does your municipality have a provision for any of the following? (Check all applicable.)	
<input type="checkbox"/> 1. Initiative. Permits citizens to place charter, ordinance, or home rule changes directly on ballot for approval or disapproval of the voters.	Yes = 37% NR = 63%
<input type="checkbox"/> 2. Referendum. Allows voters to vote on public issues/legislation (i.e. bond issues, charter changes, etc.)	Yes = 67% NR = 33%
<input type="checkbox"/> 4. Petition or Protest Referendum. Allows voters to delay enactment of a local ordinance or bylaw until a referendum is held.	Yes = 24% NR = 76%
<u>1996. Survey (N = 4,552)</u>	
5. Does your municipality have a provision for any of the following? (Check all applicable.)	
<input type="checkbox"/> a. Initiative. Permits citizens to place charter, ordinance, or home rule changes directly on ballot for approval or disapproval of the voters.	Yes = 39% NR = 61%
<input type="checkbox"/> b. Binding referendum. Allows voters to determine the outcome on public issues by binding the governing body to act on voters' opinions.	Yes = 28% NR = 72%

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|---|-----------------------|
| <input type="checkbox"/> c. Non-binding referendum. Allows voters to express an opinion on a specific topic without binding the governing body to act on voters' opinion. | Yes = 26%<br>NR = 74% |
| <input type="checkbox"/> e. Petition or Protest Referendum. Allows voters to delay enactment of a local ordinance until a referendum is held.                             | Yes = 24%<br>NR = 76% |
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*Note.* The questions are taken verbatim from the Form of Government survey questionnaire distributed by the ICMA. N is the number of observations in the full ICMA data set. NR means “no response.”

**Table 3. Availability of Initiative, 1981, 1986, 1991, 1996**

	1981	1986	1991	1996
<i>All cities</i>				
% of cities with initiative	51.0	49.7	36.9	38.5
% of population in a city with initiative	70.4	71.0	61.8	61.2
<i>Cities in initiative states</i>				
% of cities with initiative	75.0	71.4	58.8	57.9
% of population in a city with initiative	90.3	90.3	82.1	77.7
<i>Cities in non-initiative states</i>				
% with initiative	32.2	32.3	21.2	24.0
% of population in a city with initiative	53.1	53.8	44.7	47.3
% of population in a city or state with initiative	73.7	75.6	69.4	71.4

*Note.* The data were taken from the ICMA Form of Government Survey, 1981, 1986, 1991, 1996, and Bureau of Census, *County and City Data Book*, 1983, 1988, 1993. The number of cities in 1981, 1986, 1991, 1996 respectively was 3,719, 3,904, and 4,978, and 4,565. The total population of those cities where population could be determined was, respectively, 96.3 million, 92.8 million, 120.9 million, and 110.5 million.

**Table 4. Percentage of Cities that Provide for the Initiative, by Region**

	1981	1986	1991	1996
West	82.2 (652)	76.9 (713)	67.6 (792)	62.1 (745)
South	39.6 (1,000)	35.2 (1,102)	27.3 (1,429)	28.8 (1,310)
Midwest	50.0 (1,101)	49.1 (1,178)	36.1 (1,511)	37.0 (1,450)
Northeast	44.4 (904)	46.7 (911)	29.5 (1,246)	36.3 (1,059)

*Note.* The main entry in each cell is the percentage of cities in the region that provide for the initiative. In parentheses is the total number of cities in the sample for the region. Regions follow Census classifications. West includes HI, AK, CA, OR, WA, NV, UT, AZ, NM, CO, WY, ID, MT. South includes TX, OK, LA, AR, MS, AL, TN, KY, FL, GA, SC, NC, WV, VA, MD, DE. Midwest includes KS, NE, SD, ND, MO, IA, MN, WI, MI, IL, IN, OH. Northeast includes PA, NJ, NY, CT, RI, MA, VT, NH, ME. Data were taken from the ICMA Form of Government Surveys, 1981, 1986, 1991, 1996.

**Table 5. Percentage of Cities with the Initiative, by Population of City**

Population	<u>Percentage of Cities with Initiative</u>			
	1981	1986	1991	1996
Less than 5,000	42.0 (1,504)	42.5 (1,720)	24.0 (1,727)	27.6 (1,574)
5,000 to 10,000	45.3 (775)	40.8 (752)	33.4 (1,217)	35.4 (1,133)
10,000 to 25,000	54.8 (766)	54.4 (755)	41.4 (1,123)	44.6 (1,050)
25,000 to 50,000	68.7 (348)	68.0 (369)	54.0 (507)	50.7 (471)
50,000 to 100,000	79.3 (193)	75.9 (191)	68.0 (253)	63.9 (208)
100,000 to 250,000	80.5 (87)	77.6 (76)	67.3 (98)	59.8 (82)
More than 250,000	73.9 (46)	85.4 (41)	77.4 (53)	80.8 (47)

*Note.* The main entries indicate the percentage of cities with the indicated population in the indicated year that provided for the initiative. In parentheses is the number of cities. The data were taken from the ICMA Form of Government Surveys, 1981, 1986, 1991, 1996, and the Census Bureau's *County and City Data Book*, 1983, 1988, 1993.