9.20  Direct legislation.

(1)  A number of electors equal to at least 15% of the votes cast for governor at the last general election in their city or village may sign and file a petition with the city or village clerk requesting that an attached proposed ordinance or resolution, without alteration, either be adopted by the common council or village board or be referred to a vote of the electors. The individual filing the petition on behalf of the electors shall designate in writing an individual to be notified of any insufficiency or improper form under sub. [(3)](https://docs.legis.wisconsin.gov/document/statutes/9.20%283%29).

(2) The preparation and form of the direct legislation petition shall be governed by s. [8.40](https://docs.legis.wisconsin.gov/document/statutes/8.40).

(2m) After the petition has been offered for filing, no name may be erased or removed. No signature may be considered valid or counted unless the date is less than 60 days before the date offered for filing.

(3) Within 15 days after the petition is filed, the clerk shall determine by careful examination whether the petition is sufficient and whether the proposed ordinance or resolution is in proper form. The clerk shall state his or her findings in a signed and dated certificate attached to the petition. If the petition is found to be insufficient or the proposed ordinance or resolution is not in proper form, the certificate shall give the particulars, stating the insufficiency or improper form. The petition may be amended to correct any insufficiency or the proposed ordinance or resolution may be put in proper form within 10 days following the affixing of the original certificate and notification of the individual designated under sub. [(1)](https://docs.legis.wisconsin.gov/document/statutes/9.20%281%29). When the original or amended petition is found to be sufficient and the original or amended ordinance or resolution is in proper form, the clerk shall so state on the attached certificate and forward it to the common council or village board immediately.

(4) The common council or village board shall, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors at the next spring or general election, if the election is more than 6 weeks after the date of the council's or board's action on the petition or the expiration of the 30-day period, whichever first occurs. If there are 6 weeks or less before the election, the ordinance or resolution shall be voted on at the next election thereafter. The council or board by a three-fourths vote of the members-elect may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election, but not more than one special election for direct legislation may be ordered in any 6-month period.

(5) The clerk shall cause notice of the ordinance or resolution that is being submitted to a vote to be given as provided in s. [10.06 (3) (f)](https://docs.legis.wisconsin.gov/document/statutes/10.06%283%29%28f%29).

(6) The ordinance or resolution need not be printed in its entirety on the ballot, but a concise statement of its nature shall be printed together with a question permitting the elector to indicate approval or disapproval of its adoption.

(7) If a majority vote in favor of adoption, the proposed ordinance or resolution shall take effect upon publication under sub. [(5)](https://docs.legis.wisconsin.gov/document/statutes/9.20%285%29). Publication shall be made within 10 days after the election.

(8) City ordinances or resolutions adopted under this section shall not be subject to the veto power of the mayor and city or village ordinances or resolutions adopted under this section shall not be repealed or amended within 2 years of adoption except by a vote of the electors. The common council or village board may submit a proposition to repeal or amend the ordinance or resolution at any election.

History: [1977 c. 102](https://docs.legis.wisconsin.gov/document/acts/1977/102); [1983 a. 484](https://docs.legis.wisconsin.gov/document/acts/1983/484); [1989 a. 192](https://docs.legis.wisconsin.gov/document/acts/1989/192), [273](https://docs.legis.wisconsin.gov/document/acts/1989/273).

This section implements legislative powers reserved by the people. Subject to certain conditions, a common council has no authority to make an initial judgment of the constitutionality or validity of proposed direct legislation. State ex rel. Althouse v. Madison, [79 Wis. 2d 97](https://docs.legis.wisconsin.gov/document/courts/79%20Wis.%202d%2097), [255 N.W.2d 449](https://docs.legis.wisconsin.gov/document/courts/255%20N.W.2d%20449) (1977).

A proposal that is administrative, rather than legislative in character, is not the proper subject of initiative proceedings. State ex rel. Becker v. City of Milwaukee Common Council, [101 Wis. 2d 680](https://docs.legis.wisconsin.gov/document/courts/101%20Wis.%202d%20680), [305 N.W.2d 178](https://docs.legis.wisconsin.gov/document/courts/305%20N.W.2d%20178) (Ct. App. 1981).

A city clerk has a mandatory duty to forward to the common council a sufficient petition and ordinance in proper form. State ex rel. North v. Goetz, [116 Wis. 2d 239](https://docs.legis.wisconsin.gov/document/courts/116%20Wis.%202d%20239), [342 N.W.2d 747](https://docs.legis.wisconsin.gov/document/courts/342%20N.W.2d%20747) (Ct. App. 1983).

The power of initiative does not extend to legislative decisions that have already been made by the legislative body. Schaefer v. Potosi Village Board, [177 Wis. 2d 287](https://docs.legis.wisconsin.gov/document/courts/177%20Wis.%202d%20287), [501 N.W.2d 901](https://docs.legis.wisconsin.gov/document/courts/501%20N.W.2d%20901) (Ct. App. 1993).

If statutes establish procedures for the accomplishment of legislation in a certain area, an initiative may not effect legislation that would modify the statutory directives that would bind a municipality if it were legislating in the same area. Section 62.23 establishes such procedures for zoning; zoning may not be legislated or modified by initiative. An ordinance constituting a pervasive regulation of, or prohibition on, the use of land is zoning. Heitman v. City of Mauston, [226 Wis. 2d 542](https://docs.legis.wisconsin.gov/document/courts/226%20Wis.%202d%20542), [595 N.W.2d 450](https://docs.legis.wisconsin.gov/document/courts/595%20N.W.2d%20450) (Ct. App. 1999), [98-3133](https://docs.legis.wisconsin.gov/document/courts/98-3133).

There are 4 exceptions to the sub. (4) requirement that requested direct legislation be either passed or submitted to the electors: 1) when the proposed direct legislation involves executive or administrative matters, rather than legislative ones; 2) when it compels the repeal of an existing ordinance, or compels the passage of an ordinance in clear conflict with existing ordinances; 3) when it seeks to exercise legislative powers not conferred on a municipality; and 4) when it would modify statutorily prescribed directives that would bind a municipality if it were attempting to legislate in the same area. Mount Horeb Community Alert v. Village Board of Mt. Horeb, 2002 WI App 80, [252 Wis. 2d 713](https://docs.legis.wisconsin.gov/document/courts/252%20Wis.%202d%20713), [643 N.W.2d 186](https://docs.legis.wisconsin.gov/document/courts/643%20N.W.2d%20186), [01-2217](https://docs.legis.wisconsin.gov/document/courts/01-2217).

Mandamus is the appropriate action when a city council refuses either option of sub. (1) Mount Horeb Community Alert v. Village Board of Mt. Horeb, 2002 WI App 80, [252 Wis. 2d 713](https://docs.legis.wisconsin.gov/document/courts/252%20Wis.%202d%20713), [643 N.W.2d 186](https://docs.legis.wisconsin.gov/document/courts/643%20N.W.2d%20186), [01-2217](https://docs.legis.wisconsin.gov/document/courts/01-2217).

A proposed ordinance, initiated by a group of citizens, to require a village to hold a binding referendum prior to the start of construction on any new village building project requiring a capital expenditure of $1 million or more was an appropriate subject of direct legislation. Mount Horeb Community Alert v. Village Board of Mt. Horeb, 2003 WI 100, [263 Wis. 2d 544](https://docs.legis.wisconsin.gov/document/courts/263%20Wis.%202d%20544), [665 N.W.2d 229](https://docs.legis.wisconsin.gov/document/courts/665%20N.W.2d%20229), [01-2217](https://docs.legis.wisconsin.gov/document/courts/01-2217).

Section 893.80 (1) (b), which requires the filing of a notice of claim before an action may be commenced against a municipality, did not apply to an action for mandamus seeking to compel a city council to comply with this section. Oak Creek Citizen's Action Committee v. City of Oak Creek, 2007 WI App 196, [304 Wis. 2d 702](https://docs.legis.wisconsin.gov/document/courts/304%20Wis.%202d%20702); [738 N.W.2d 168](https://docs.legis.wisconsin.gov/document/courts/738%20N.W.2d%20168), [06-2697](https://docs.legis.wisconsin.gov/document/courts/06-2697).

A "concise statement" under sub. (6), properly construed, means a brief statement of the general purpose of the proposed ordinance. It is not required that the ballot must contain every essential element of the proposed ordinance. Metropolitan Milwaukee Association of Commerce, Inc. v. City of Milwaukee, 2011 WI App 45, [332 Wis. 2d 459](https://docs.legis.wisconsin.gov/document/courts/332%20Wis.%202d%20459), [798 N.W.2d 287](https://docs.legis.wisconsin.gov/document/courts/798%20N.W.2d%20287), [09-1874](https://docs.legis.wisconsin.gov/document/courts/09-1874).

When an ordinance was never implemented because an injunction was issued and 2 years passed before the injunction was vacated, the 2-year time period excluded the time between the issuance of an injunction and its vacation. In that circumstance, returning the parties to the position they were in as of the date on which the temporary injunction is the only reasonable construction of sub. (8). Metropolitan Milwaukee Association of Commerce, Inc. v. City of Milwaukee, 2011 WI App 45, [332 Wis. 2d 459](https://docs.legis.wisconsin.gov/document/courts/332%20Wis.%202d%20459), [798 N.W.2d 287](https://docs.legis.wisconsin.gov/document/courts/798%20N.W.2d%20287), [09-1874](https://docs.legis.wisconsin.gov/document/courts/09-1874).

Vox Populi: Wisconsin's' Direct Legislation Statute. Bach. Wis. Law. May 2008.