

Memorandum



Date: September 4, 2007

To: Victor M. Diaz, Chairman
Charter Review Task Force

From: Susanne M. Torriente
Assistant County Manager 

Subject: Information Package for Charter Review Task Force – Issue 5

At its August 1, 2007 meeting, the Charter Review Task Force (CRTF) approved a list of issues, in priority order, for study during this process.

Per your direction, research on Issue 5, the Study of Initiative, Referendum, Petition & Recalls has been performed. Specifically, staff has conducted general research regarding the use of initiatives and recalls in the United States. The attached presentation includes information regarding the history and major pros and cons of these processes, as well as specific strategies used by communities to improve them. Additionally, we have attached detailed findings regarding provisions for initiative and recall in seven Florida counties and thirteen large counties nationwide.

I would like to thank Amy Horton-Tavera, Paul Mauriello, Cara Tuzeo, John Murphey and Tracie Auguste for pulling this data together. Staff will continue to research this issue, as well as the other issues approved by the Task Force.

c: Charter Review Task Force Members and Staff

Direct Democracy: Initiative and Recall

Prepared for the Miami-Dade County Charter Review Task Force

September 2007

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Selected References

Primary References:

- Cronin, Thomas E. Direct Democracy: The Politics of Initiative, Referendum and Recall. 1989: Harvard University Press, Cambridge, MA
- National Conference of State Legislatures Initiative and Referendum in the 21st Century: Final Report and Recommendations of the NCSL I&R Task Force, 2002.

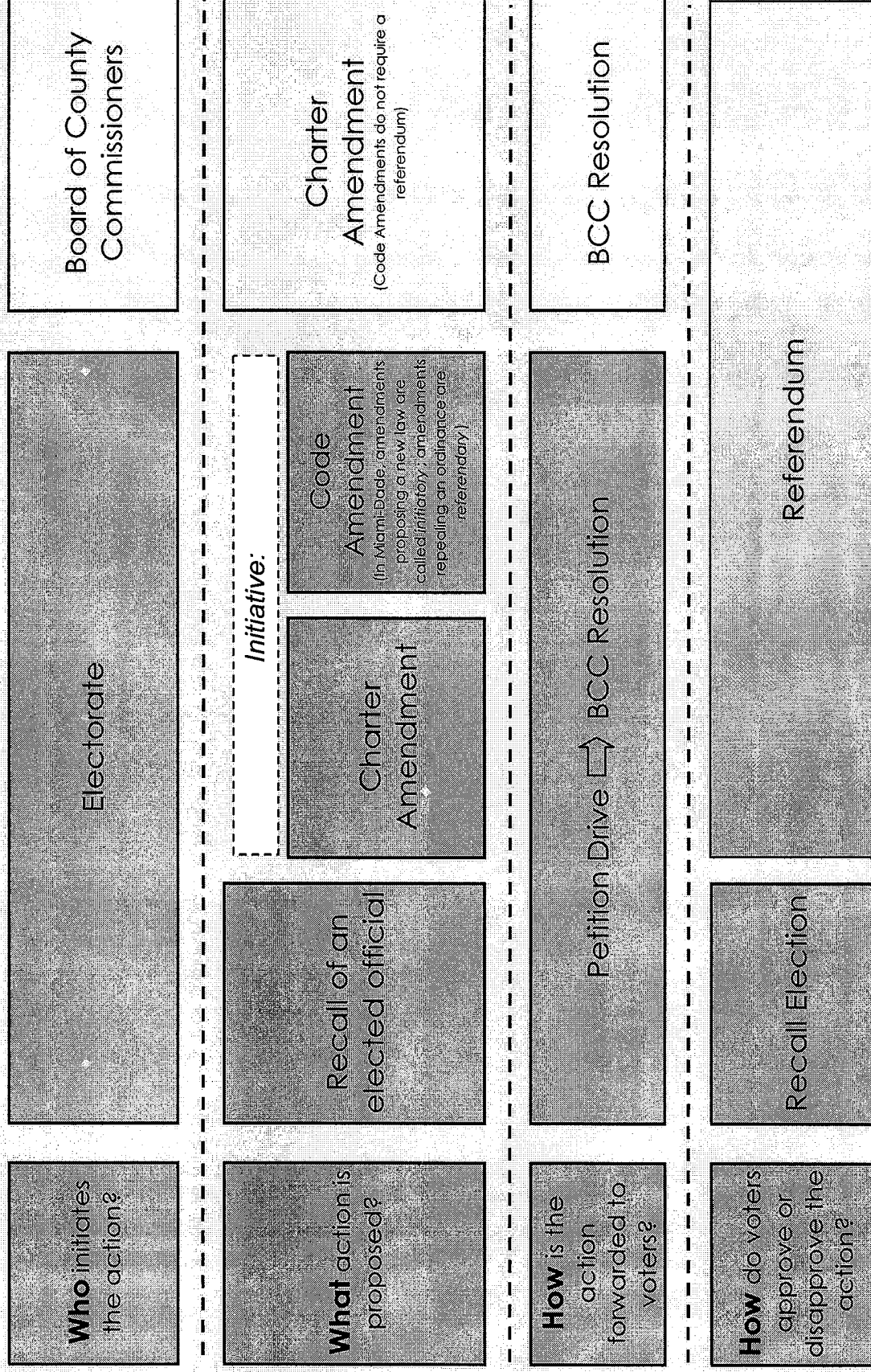
Supplementary References:

- International City/County Management Association Municipal Form of Government Survey, 2001
- Greenblatt, Alan Total Recall, Governing Magazine, September 2003
- Drage, Jennifer Taming the Initiative Beast, State Legislatures Magazine, September 2000

Websites consulted:

- National Conference of State Legislatures, www.ncsl.org
- Initiative and Referendum Institute, www.iandrinstitute.org

Overview of Direct Democracy Mechanisms



Terminology and procedures may vary somewhat by jurisdiction. Chart reflects the most common use of the terms *initiative*, *recall* and *referendum*.

In some jurisdictions, the legislative body may adopt Code amendments proposed by *initiative* in lieu of placing them on the ballot.

A Brief History of Referenda and Initiatives

- The notion of direct lawmaking by the people dates back to colonial times, when laws were often crafted through town hall meetings.
- During the 18th century, some colonies and later states provided for “binding representation” whereby legislators were required to vote in accordance with majority wishes.
- The modern referendum process developed during the 19th century, when many states required popular approval of state constitutions and some states began to require referenda to incorporate municipalities, establish schools, or incur debt.
- The citizen initiative process was championed by the Populist Party in the late 19th century and in 1898 South Dakota became the first state to establish an initiative process.

The Initiative Process Today

- There is no national initiative process.
- As of 2002, 21 states provided for statutory initiative and 18 states (including Florida) provided for state constitutional initiative.
- According to a survey conducted in 2001 by the International City/County Management Association, 58% of responding municipalities had initiative provisions.

Initiative: Major Pros and Cons

- Today's proponents of the initiative process argue that:
 - The initiative is a direct form of democracy and provides an mechanism by which the people can petition their government for redress of grievances.
 - The initiative provides a necessary tool for the people when the legislature is corrupt or unresponsive.
- Initiative critics argue that:
 - The initiative process undermines representative democracy and lacks its traits of deliberative debate and compromise.
 - Voters frequently lack the information necessary to make educated decisions.
 - Results are frequently unduly influenced by wealthy special interests.

Benchmarking Highlights - Initiative

- Staff conducted benchmarking research on the initiative process in 7 Florida counties and 13 large national counties. *Our findings reflect the provisions of the respective county charters or, for non-charter counties, the county code.*
- All 7 Florida counties provide for an initiative process. 11 of the 13 national counties also allow initiatives.
- All Florida counties require signatures from between 7% and 10% of registered voters. Three Florida counties (including Miami-Dade) place restrictions on the number of signatures that can come from a geographic area.
- Of the national counties, 3 base signature requirements on the number of registered voters; requirements range from 5 to 20% of voters. Eight counties base signature requirements on the number of voters participating in the last General Election. Requirements range from 8% to 20% of voters.
- Of the Florida counties, 5 restrict the time frame for signature gathering. In 4 of these counties, the limit is 180 days; in Miami-Dade County the limit is 60 days.
- Many of the national counties limit the time frame for signature gathering; limits range from 90 days to 1 year.

Benchmarking Highlights – Initiative cont.

- Only two of the 20 counties surveyed (Miami-Dade and Broward) impose a specific time requirement within which a referendum must be called; most require the referendum to be held at the next countywide election.
- Many counties impose a waiting period between the time a petition is verified and when the referendum is held; waiting periods range from 30 to 135 days.
- Many counties specifically provide that the council may adopt the proposed legislation in lieu of calling a referendum (generally for code amendments only).
- We identified three counties (including Miami-Dade) that restrict the council's authority to modify legislation approved by referendum within a certain time period. The California counties surveyed provide that legislation proposed by initiative, but enacted by the council, may only be overturned by popular vote.
- Three of the 7 Florida counties (Broward, Orange and Pinellas) impose restrictions on the subject matter of initiatives, such as budget issues, employee compensation, and functioning of the courts or constitutional officers.
- We identified 2 national counties with similar subject matter restrictions.

The Initiative Process:

Issues and Community Responses

Issues are frequently expressed concerns; **community responses** are policies that have been implemented by governments and/or proposed by various organizations or community groups

Issue	Community Responses:
The Initiative process lacks the deliberation, debate and compromise characteristic of representative democracy	Allow for an advisory initiative process (Straw ballot)
Voters often lack adequate and transparent information needed to make educated decisions	Provide for an indirect initiative process (After proponents gather required signatures, initiative is referred to the council, which may enact, defeat or amend the measure.) Require public hearings on initiative proposals Allow councils to place alternative proposals on the ballot Require sunset provisions on initiative measures Provide all voters with user-friendly information on initiative measures, including arguments in favor of and against the proposed measure Require fiscal impact statements on ballot Require public hearings on initiative proposals Provide voters with a list of individuals and organizations endorsing or opposing initiative measures

The Initiative Process:

Issues and Community Responses cont.

Issue	Community Responses:
The Initiative process is often a tool of special interests whose supporters and motives may not be known	Require financial disclosure by individuals or organizations contributing money over a threshold amount Require signature gatherers to file statements of organization Make financial disclosure requirements for initiative campaigns consistent with requirements for candidates for elected office
Organizing a successful petition drive is costly, so only wealthy interests have access to the process	Lower signature requirements for all-volunteer campaigns Provide drafting assistance to proponents Prohibit the use of public funds or resources to support or oppose an initiative measure
The signature gathering process is vulnerable to fraud	Require signature gatherers to file statements of organization Prohibit payment in exchange for signatures Require signature gatherers to disclose whether they are paid Institute criminal penalties for fraud or misrepresentation

The Initiative Process: The Initiative Process: Issues and Community Responses cont.

Issue	Community Responses:
Some matters, such as budgetary and employee issues, or issues surrounding the court system, should not be subject to a popular vote	Prohibit or restrict (e.g. though supermajority provisions) initiatives on certain subjects
Initiatives can create unfunded mandates for governments	Prohibit or restrict (e.g. though supermajority provisions) initiatives that appropriate revenue or change fees
Initiative proponents elect to amend the charter rather than code to prevent the council from amending or repealing the proposal	Require fiscal impact statements on ballot
Lengthy legal battles can impede the initiative process	Limit the council's authority to amend legislation approved by initiative
	Establish a review process and opportunity for public challenge of technical matters
	Impose time limits on technical challenges

A Brief History of Recall

- A Constitutional recall provision was considered but ultimately rejected by the Founding Fathers.
- The Populist and Socialist Labor parties urged states and cities to adopt the recall in the late 19th century.
- In 1903, Los Angeles became the first major city to approve the recall in its charter.
- Oregon was the first state to adopt the recall in 1908.

The Recall Process Today

- At least thirty-six states permit the recall of local officials. Most recall states, including Florida, have established specific recall requirements and procedures.
- According to research conducted in 2001 by the International City/County Management Association, 61% of U.S. counties and cities have a recall process. From 1996 to 2001, recall elections took place in almost 10% of cities.
- Local recalls are more prevalent in smaller cities and school boards than in large cities and counties.
- The “success rate” for recall elections is under one-third at the local level.
- There is no national recall process.

Recall: Major Pros and Cons

- Today's proponents of the recall process argue that:
 - It provides for continuous accountability of elected officials
 - The threat of recall helps provide a check against undue influence by special interests
 - Recall provides a “safety valve” for intense opposition and is a sensible alternative to impeachment
- Recall critics argue that:
 - The recall process undermines basic principles of representative democracy and constrains the independence of legislators
 - Recall elections can be unduly influenced by wealthy special interests
 - Recall elections can be polarizing and confusing to voters
 - Recall makes elective office less appealing to potential candidates

Benchmarking Highlights - Recall

- Staff conducted benchmarking research on the recall process in 7 Florida counties and 13 large national counties. *Our findings reflect the provisions of the respective county charters or, for non-charter counties, the county code.*
- In general, recall procedures tend to be regulated by state law.
- All 7 Florida counties provide for recall of local elected officials. Eight of the 13 national counties provide for recall.
- In 6 of 7 Florida counties, recall petitions must be signed by 5% of registered voters for large jurisdictions. In Miami-Dade County, the signatures of 4% of registered voters are required.
- Nationally, signature requirements vary and may be based on the number of registered voters or on the number of votes cast in the previous general election. In either case requirements range from 10 to 25%.
- Florida Statute 100.361 provides that officials may be recalled for “malfeasance; misfeasance; neglect of duty; drunkenness; incompetence; permanent inability to perform official duties; or conviction of a felony involving moral turpitude.”
- We identified 1 national county (Wayne, MI) that places restrictions on the reasons for recall.

The Recall Process: Issues and Community Responses

Issues are frequently expressed concerns; **community responses** are policies that have been implemented by governments and/or proposed by various organizations or community groups

Issue	Community Responses:
Some recall campaigns are groundless or constitute "sour grapes"	Restrict permissible reasons for recall Restrict the time frame within which a recall can be undertaken Impose high signature requirements
The recall process is often a tool of special interests whose supporters and motives may not be known	Require financial disclosure by individuals or organizations contributing money over a threshold amount Require signature gatherers to file statements of organization
The signature gathering process is vulnerable to fraud	Make financial disclosure requirements for recall campaigns consistent with requirements for candidates for elected office Require signature gatherers to file statements of organization Prohibit payment in exchange for signatures Require signature gatherers to disclose whether they are paid
Recall elections can be polarizing and confusing to voters	Institute criminal penalties for fraud or misrepresentation Require public hearings and/or preliminary trial by citizen jury Require "cooling off" period prior to a recall election

Initiative and Recall - Benchmarking Results
Prepared for the Miami-Dade County Charter Review Task Force

County	Population (approx)	Signatures Required	Time Frame for Signature Gathering	Citizen Initiatives Course of Action	Council Authority to Modify Legislation	Subject Matter Restrictions	Recalls
Miami-Dade	2,378,000	CHARTER: 10% of total registered voters ORDINANCE: 4% of total registered voters, with no more than 25% coming from any single commission district.	60 days	Board must call an election within 60-120 days of the date the certified petition is presented; special election must be called if no general election is scheduled to occur within 60-120 days. In the case of an ordinance, the Board may adopt the ordinance as submitted (in an initiative petition) or repeal the ordinance (in a referendum petition) within 30 days.	An ordinance adopted by the electorate through initiative proceedings cannot be amended or repealed by the Board for a period of one year after it was adopted, but thereafter it may be amended or repealed like any other ordinance.	No - however, any reduction or elimination of existing revenue or any increase in expenditures not provided for by the current budget or by existing bond issues shall not take effect until the beginning of the next succeeding fiscal year.	Must be in office at least 1 year. Requires 4% of registered voters' signatures. BCC must hold recall election 45-90 days after certified petition is submitted.
Broward	1,778,000	CHARTER/ORDINANCE: 7% of the total number of registered voters in the County, with no more than 25% shall come from any single district	180 days	Once the petition is validated, the Commission must call a special election at least (90) days after the determination of the validity of the petition; or if the petition contains 10% of the registered voters in the County at the date of the last general election, the election shall take place preferably in an already scheduled election or at least (90) days and no later than (120) days from validity of petition	Not Specified	The initiative power shall not extend to the proposing of any part or all of the annual budget or capital programs or fixing ordinance making or repealing any appropriation of money fixing the salaries of County officers or employees or authorizing or repealing the levy of taxes	In accordance with F.S. 100.361, which requires signatures from at least 15% of registered voters. The recall election must be scheduled by the Chief Judge between 30 and 60 days following certification of signatures.
Palm Beach	1,269,000	CHARTER: 7% of the total number of registered voters in the county.	Not specified	Once the petition is validated, the Commission holds public hearings on the proposed ordinance according to law and votes on the proposed ordinance. If the Board fails to adopt the proposed ordinance, they shall place the ordinance for referendum on the ballot at the next general election at least after (30) days after the Commissioner's vote.	Not Specified	Each amendment shall be limited to a single independent subject.	F.S. 100.361
Hillsborough	1,132,000	8% of all registered voters in the county	6 months to get the required signatures before petition becomes in valid		Not Specified	Not Specified	F.S. 100.361
Orange	1,023,000	CHARTER: Petitions must be signed by 10% of the total registered voters in the county. ORDINANCE: Petitions must be signed by 7% of the registered voters in the county.	180 days	Once the petition is validated, the Board must call a referendum to be held at the next primary, general election or special election at least (45) days after the adoption of such resolution.	Not Specified	Initiative power does not include ordinances relating to administrative or judicial functions of county government, including, but not limited to, county budget, debt obligations, capital improvement programs, salaries of county officers and employees and the levy and collection of taxes.	F.S. 100.361
Pinellas	928,000	CHARTER: Petitions must be signed by 10% of the total registered voters of the county, with no more than 40% residing in any one at-large district and no more than 30% residing in any one single-member district	180 days	In order for petitions to be placed on the ballot in the general election, they must be certified by the supervisor of elections at least 90 days before the election.	Not Specified	Proposed amendments may not affect the status, duties, responsibilities of the county officers (clerk of the circuit court, property appraiser, tax collector, sheriff, and supervisor of elections).	F.S. 100.361
Duval / City of Jacksonville	826,000	Petitions must be signed by 10% of the total registered voters of the county.	Not Specified	A public referendum is held once a validated petition is presented. Unless otherwise scheduled by the Council, the referendum is held as a part of and at the same time as the next consolidated government, school board, state or federal election, in which all qualified voters of Duval County are entitled to participate, but not less than thirty (30) days from the validation of the petition.	Not Specified	Not Specified	F.S. 100.361
Los Angeles, CA	9,935,000	10% of the number of votes cast within the County for all Governor candidates in most recent election	180 days	The Board of Supervisors has 3 options: 1) Adopt the ordinance without alteration at the regular meeting or within 10 days of being presented with certified petition. 2) Submit to voters in next general election (petitions signed by 20% of voters go to special election) or 3) Order a report at the regular meeting at which certified petition is presented. When the report is presented to the Board, it shall either adopt the ordinance within 10 days or order an election.	An ordinance proposed and adopted by initiative petition may not be repealed or amended except by referendum, unless otherwise indicated in the original ordinance.	Recall may commence after 90 days in office, but not if officer has 6 months or less left in term. No specific grounds are required. Time for gathering signatures is 40 - 160 days (depending upon the size of the jurisdiction). Signature requirement varies between 10% to 30 %, according to the number of registered voters in the jurisdiction	

Initiative and Recall - Benchmarking Results
Prepared for the Miami-Dade County Charter Review Task Force

County	Population (approx.)	Signatures Required	Time Frame for Signatures Gathering	Citizen Initiatives Course of Action	Council Authority to Modify Legislation	Subject Matter Restrictions	Recalls
Cook County, IL	5,304,000	State statutes govern Submitting of Public Questions. Petitions which are binding may be submitted only as authorized by the particular statute pertaining to the law in question. Advisory questions require signatures by a number of voters at least equal to 8% of the votes cast for governor in the last election (there is no charter).	Generally, no longer than one year from the filing date, but may vary depending on the provisions of a particular state statute.	Variable depending on the specific state statute provisions authorizing the petition.	Not Specified	Variable depending on the specific state statute provisions authorizing the petition.	No recalls are authorized in the State of Illinois.
Orange County, CA	2,988,000	10% of the number of votes cast within the County for all Governor candidates in most recent election	180 days	Board of Supervisors has 3 options: 1) Adopt the ordinance without alteration at the regular meeting or within 10 days of being presented with certified petition. 2) Submit to voters in next general election (petitions signed by 20% of voters go to special election). or 3) Order a report at the regular meeting at which certified petition is presented. When the report is presented to the Board, it shall either adopt the ordinance within 10 days or order an election.	An ordinance proposed and adopted by initiative petition may not be repealed or amended except by referendum, unless otherwise indicated in the original ordinance.		Recall may commence after 90 days in office, but not if officer has 6 months or less left in term. No specific grounds are required. Time for gathering signatures is 40 - 160 days (depending upon the size of the jurisdiction). Signature requirement varies between 10% to 30 %, according to the number of registered voters in the jurisdiction.
San Diego County, CA	2,933,000	10% of the number of votes cast within the County for all Governor candidates in most recent election	180 days	Board of Supervisors has 3 options: 1) Adopt the ordinance without alteration at the regular meeting or within 10 days of being presented with certified petition. 2) Submit to voters in next general election (petitions signed by 20% of voters go to special election). or 3) Order a report at the regular meeting at which certified petition is presented. When the report is presented to the Board, it shall either adopt the ordinance within 10 days or order an election.	An ordinance proposed and adopted by initiative petition may not be repealed or amended except by referendum, unless otherwise indicated in the original ordinance.	Not Specified	Recall may commence after 90 days in office, but not if officer has 6 months or less left in term. No specific grounds are required. Time for gathering signatures is 40 - 160 days (depending upon the size of the jurisdiction). Signature requirement varies between 10% to 30%, according to the number of registered voters in the jurisdiction.
Dallas County, TX	2,305,000	Citizens are required to contact their commissioner or ordinance.			N/A	N/A	Dallas County law does not allow popular recall by petition.
Wayne, MI	1,998,000	CHARTER: 10% of the base vote (total votes cast in last gubernatorial election). INITIATIVE: 8% of the base vote.	180 days	If not enacted by the Board within 40 days, the measure must be submitted for approval or rejection at the next general election. The legislative body may reject any measure proposed by initiative and propose a different measure on the same subject. Both measures will appear on the ballot for approval or rejection and the measure with the highest vote will prevail.	Not Specified	Not Specified	Elected official must be in office 6 months prior to recall. Recall petition requires signatures from 25% of the base vote. The reasons for recall are subject to a clarity sufficiency finding by the Board, which finding is subject to appeal to the circuit court.
King, WA	1,794,000	REPEAL OF ORDINANCE: 8% percent of the votes cast for the office of county executive at the last preceding election INITIATION OF ORDINANCE: 10% percent of the votes cast in the county for the office of county executive at the last preceding election for county executive	Not Specified	REPEAL OF ORDINANCE: The ordinance to be referred is placed on the ballot at the next election occurring more than 45 days after the petition is filed. INITIATION OF ORDINANCE: The ordinance to be referred is placed on the ballot at the next regular or special election occurring more than 145 days after the petition is filed or at an earlier election designated by the county council. However, if the proposed ordinance is enacted at any time prior to the election, shall not be placed on the ballot or be voted on unless it is subjected to referendum. If the county council rejects the proposed ordinance and adopts a substitute ordinance concerning the same subject matter, the substitute ordinance shall be placed on the same ballot with the proposed ordinance.	No ordinance approved by a majority of the voters can be amended or repealed by the county council within a period of two years; but such ordinance may be amended within the two-year period by ordinance adopted by 2/3 of the Council members; such amendatory ordinance is not subject to referendum.	The following are not subject to repeal: An appropriation ordinance; an ordinance necessary for the immediate preservation of the public peace, health or safety or for the support of county government and its existing public institutions; an ordinance proposing amendments to this charter; an ordinance related to collective bargaining or providing for the compensation or working conditions of county employees; or an ordinance which has been approved by the voters by referendum or initiative.	All elected officials are subject to recall in accordance with State law.
Clark, NV	1,711,000	All election laws for counties are in accordance with Virginia state law. Petitions must be signed by a number of registered voters of the county equal to 10 percent or more of the number of voters who voted at the last preceding general election in the county.	120 days	If the Board fails to adopt the proposed initiative ordinance without any change in substance or fails to repeal the referred ordinance within 30 days, the board shall submit the proposed or referred ordinance to the registered voters of the county. The vote of the county on the proposed or referred ordinance must be held at the next general election.	Not Specified	Not Specified	Petitions are required to be signed by 25% of the registered voters.

National Comparables

Initiative and Recall - Benchmarking Results
Prepared for the Miami-Dade County Charter Review Task Force

County	Population (approx.)	Signatures Required	Time Frame for Signature Gathering	Citizen Initiates Course Of Action	Council Authority to Modify Legislation	Subject Matter Restrictions	Recalls
Fairfax, VA	1,007,000	All election laws for counties are in accordance with Virginia state law. The petitions are signed by qualified voters of the county or city equal in number to 20% of the total vote cast in the county or city for presidential elections in the last preceding presidential election	90 days	Upon filing of a valid petition, the court orders a referendum to be held at the next general election for members of the governing body of the county or city held at least sixty days after the date of the order.		Not Specified	Petitions are required to be signed by 20% of the registered voters in the county.
Montgomery County, MD	930,000	CHARTER/ORDINANCE: Petitions must be signed by 5% of the registered voters in the county or 10,000 signatures.	Not Specified	Once the petition is validated, the question is submitted to the voters of the county at the next general or Congressional election.	Not Specified	Not Specified	Maryland law does not allow popular recall by petition. Councilmembers can be removed from office by an affirmative vote of no less than six Councilmembers after a public hearing on a finding that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office.
Fulton County, GA	918,000	There are no citizen initiatives, there has to be a supporting act of legislation, such as a sales tax referendum required by the state to put on the ballot.	N/A	N/A	N/A	N/A	Petitions are required to be signed by 10% of the number of electors who were registered to vote at the last preceding election for any of the candidates offering for the office held by the public official sought to be recalled, whichever is smaller.
Mecklenburg, NC	796,000	10% of total registered voters or 5,000, whichever is less.	Not Specified	The date of the special election is fixed at not more than 120 nor fewer than 60 days after receipt of the petition. An ordinance adopted by referendum is not be subject to a referendum petition.	An ordinance adopted by the electorate through initiative proceedings cannot be amended or repealed by the Board for a period of 1 1/2 years after the election, but thereafter it may be amended or repealed like any other ordinance.	Not Specified	Not specified
Baltimore, MD	786,000	CHARTER: 20% of the registered voters of the county, or 10,000 or more of registered voters in case 20% of the number of registered voters is greater than 10,000.	Not specified; but the county executive must publish the notice in at least to newspapers for 5 consecutive weeks prior to the election.	When proposed, whether by council or by petition, the question is submitted to the voters at the next general or Congressional election. If passed, the amendments become part of the Charter after the thirtieth day following the election.	Amendments to the Charter may be proposed by act of the county council approved by a majority plus one of the total number of county council members established by the Charter and such act shall be exempt from executive veto.	Not Specified	Maryland law does not allow popular recall by petition. Councilmembers can be removed from office by an affirmative vote of no less than six Councilmembers after a public hearing on a finding that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office.