



LOCAL BALLOT QUESTIONS

William Francis Galvin
Secretary of the Commonwealth
Elections Division
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828
800-462-8683
www.sec.state.ma.us/elections
elections@sec.state.ma.us

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I. INTRODUCTION

The process for placing a question on the local election ballot depends upon the law which allows the question to be voted on, as does the language and format of the question itself. This publication provides information on the most common types of ballot questions which may appear on local election ballots. Other types of ballot questions may be permitted under the General Laws, local charters, or special acts.

II. PROPOSITION 2 1/2

Ballot questions required under section 21C of chapter 59 of the General Laws are commonly referred to as “Prop 2 ½” questions, after a phrase used in the campaign for the initiative petition which resulted in the law. These questions are placed on the ballot by the selectmen or city council for the voters to approve or reject certain changes in local real estate and property taxes. While such questions are generally referred to as “Prop 2 ½ questions,” there are different types of questions permitted by section 21C, which may involve different procedures. G.L. c. 51, § 21C.

While the Elections Division may be able to provide advice on the requirements of section 21C with respect to the election and ballot question, questions pertaining to taxation, appropriation, and the timing of a related town meeting should be addressed to the Division of Local Services within the Department of Revenue.

Override to Increase Taxes

An override to increase real estate and personal property taxes requires a majority vote of the board of selectmen or city council to be placed on the ballot. G.L. c. 51, § 21C(g).

Any question submitted to the voters under subsection (g) must be worded as follows:

“Shall the (city/town) of _____ be allowed to assess an additional \$_____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, _____?”

“Underride”

A so-called “underride” to reduce real estate and personal property taxes requires a majority vote of the selectmen or city council to be placed on the ballot. Where available, such a question may be placed on the ballot by petition of the voters. G.L. c. 51, § 21C(h).

Any question submitted to the voters under subsection (h) must be worded as follows:

“Shall the (city/town) of _____ be required to reduce the amount of real estate and personal property taxes to be assessed for the fiscal year beginning July first, _____ by an amount equal to \$_____?”

Capital Outlay

A capital outlay exemption requires a two-thirds vote of the selectmen or city council to be placed on the ballot. G.L. c. 51, § 21C(i ½).

Any question submitted to the voters under subsection (i ½) must be worded as follows:

“Shall the (city/town) of _____ be allowed to assess an additional \$ _____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, _____?”

Bond Payments

An exemption for bond payments requires a two-thirds vote of the selectmen or city council to be placed on the ballot. G.L. c. 51, § 21C(k).

Any question submitted to the voters under subsection (k) must be worded as follows:

“Shall the (city/town) of _____ be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to (state the purpose or purposes for which the monies from the local issue will be used)?”

Information on the Ballot

Proposition 2 ½ questions must appear on the ballot in the format required by law. Where required, the selectmen or city council must insert certain relevant information, such as the city or town name, the year that the fiscal year begins, the amount of money involved, and the purpose of the money. No other information may be added to the ballot question. Please note that summaries and statements explaining what a “yes” vote or a “no” vote would mean are not allowed to be appear on the ballot for Prop 2 ½ questions.¹

Elections

Proposition 2 ½ questions may appear on regular municipal election ballots, special municipal election ballots, and biennial state election ballots. In order for any ballot question to be printed on a local election ballot, it must have been voted on by the selectmen or city council and the language of the question must have been submitted to the local election official no later than the 35th day before the election. G.L. c. 54, § 42C.

Municipalities may opt to add Proposition 2 ½ questions to their biennial state election ballots. No more than three such questions may be added to the state election ballot in any city or town. In order to have any such question appear on the state election ballot, the selectmen or city council must vote to do so. A certified copy of the vote taken, along with the language of the ballot question or questions must be received by the Elections Division no later than 5:00 p.m. on the first Wednesday in August of the year in which the state election is to be held. G.L. c. 59, § 21C(i).

¹ Certain additional information can be provided but only if a municipality has accepted the provisions of section 18B of chapter 53 of the General Laws or has a special act of the Legislature authorizing additional information.

Ballot questions may not be added to primary ballots, preliminary ballots, or special state election ballots. A municipality may opt to hold a special election concurrent with a special state election, in order to save on the cost of holding a separate election. This is commonly referred to as a “dual election.” Dual elections require separate check-in and check-out lists, as well as separate ballots and warrants but can share ballot boxes.

III. COMMUNITY PRESERVATION ACT

The Community Preservation Act (CPA) allows cities and towns that accept certain provisions of the Act to create a special Community Preservation Fund by assessing a surcharge on annual real estate taxes, and to appropriate money in that fund for open space, historic resources, and affordable housing purposes.

Methods of Approval

There are two methods for accepting the CPA. The first method requires approval of both the selectmen or city council and the voters. The alternative method is through the use of a local ballot question petition to present the question directly to the voters. G.L. c. 44B, § 3(a),(h).

Legislative Body Action

The first method of approval requires that a majority of the board of selectmen or city council first approve a specific proposal to present to the voters. The legislative body must vote to accept sections 3 through 7 of chapter 44B of the General Laws and approve the amount of the surcharge. The approved surcharge cannot exceed three percent (3%). G.L. c. 44B, § 3(b).

The selectmen or city council may include certain surcharge exemptions in the proposal to be presented to the voters. After sections 3-7 have been accepted and a surcharge plan has been adopted, a ballot question to approve the acceptance must be placed before the voters at the next regularly scheduled municipal or state election.

If the next regularly scheduled election is a municipal election, the selectmen or city council must provide the text of the ballot question and summary as prepared by the municipal attorney to the local election official no later than the 35th day before the election. If the next election is a state election, the Elections Division must receive at least 60 days written notice to place the question on the ballot for that municipality.

Petitions

If the board of selectmen or city council does not accept the CPA by the 90th day before a regular municipal election or 120 days before a biennial state election, voters may petition to place the question directly on the ballot. G.L. c. 44B, § 3(h).

Under this procedure, the voters of the city or town may file a ballot question petition to have a question seeking acceptance of the act, approval of a specific surcharge percentage, and approval of any allowable exemptions to be placed on the ballot. The petition form itself must include the surcharge percentage and any exemptions, if any, proposed for approval.

The petition must be signed by at least five percent (5%) of the registered voters of the city or town and submitted to the local board of registrars of voters for certification of signatures. The board or commission must certify the signatures within seven (7) days of filing. If the petition is signed by the required number of voters, the city or town clerk or Secretary of the Commonwealth must then place the question on the ballot at the next regular municipal or state election.

If the question is to appear on a municipal election ballot, petitions must be submitted to the board or commission for certification at least 42 days before the municipal election so that certification can be completed at least 35 days before the election. If the question is to appear on a state election ballot, the petitions must be submitted to board or commission at least 67 days before the state election so that certification can be completed and notice given to the Secretary of the Commonwealth at least 60 days certification of the signatures. G.L. c. 54, § 42C.

Ballot Question

The form of the question which must appear on the ballot after approval by the selectmen or city council is set forth in the CPA. The question must be in the following format:

“Shall the (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?”

The CPA does not provide a format for a ballot question proposed by petition; however, as stated above, the CPA does contain the format of a ballot question submitted after approval of the selectmen or city council. Any ballot question proposed by petition should be placed on the ballot in substantially the same form as a question submitted after approval of the legislative body.

A fair and concise summary of the Community Preservation Act provisions that are the subject of the question must appear on the ballot underneath the question. The summary must be prepared by the city solicitor or town counsel and must include the surcharge percentage approved by the selectmen or city council. The summary should also include the exemptions, if any, adopted. G.L. c. 44B, § 3(f).

The question is approved and the statute accepted if a majority of the voters voting on the ballot question vote “yes.”

Effective Date

A community accepting the CPA at an election held before the actual tax commitment for a fiscal year is made may impose the surcharge beginning in that fiscal year, or in the fiscal year that begins the July 1st after the election, as specified in the acceptance vote of the legislative body or in the ballot question petition. G.L. c. 44B, § 4(a).

Notification of Acceptance

The city or town clerk must notify the commissioner of revenue if the CPA is accepted. The notification must include the date and terms on which the voters accepted the Act. G.L. c. 44B, § 10(a).

Amended Acceptance

A municipality may amend the surcharge percentage and exemptions in the same manner as they were originally accepted. Accordingly, amendments may be done by majority vote of the legislative body or petition and thereafter approval by the voters at an election. G.L. c. 44B, § 16(a).

Revocation of Acceptance

At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged. G. L. c. 44B, § 16(b). Therefore, if acceptance of the Act was done by petition for the ballot question, it can only be revoked by petition for a ballot question. Similarly, if acceptance was done by approval of the local legislative body and ballot question, it can only be revoked by vote of the local legislative body and ballot question.

IV. NON-BINDING BALLOT QUESTIONS

Non-binding ballot questions allow voters to express their opinions on a given subject without any legal effect. Non-binding public advisory questions may be placed on regular municipal election ballots by the board of selectmen, by the city council with the approval of the mayor (subject to local charter provisions), by the voters through town meeting or the petition process. Any non-binding ballot question must be provided to the clerk no later than 35 days before the election. G.L. c. 53, § 18A; G.L. c. 54, § 42C.

Voters may propose non-binding public advisory questions by submitting a petition signed by at least 10 registered voters to the board of selectmen or city council. If the board of selectmen or council declines to place the proposed question on the ballot and there are at least 90 days before the next regular municipal election, the proponents of the question may collect the signatures of at least 10 percent (10%) of registered voters on petitions to be filed with the registrars. G.L. c. 53, § 18A.

The board of registrars shall have seven days to certify the signatures on petitions for non-binding questions. If a sufficient number of signatures are certified, the clerk must place the question on the ballot at the next regular municipal election, provided that the election is no less than 35 days away. This means that any group wishing to place a non-binding question on the ballot should submit the petitions no later than the 42nd day (6 weeks) before the election. G.L. c. 54, § 42C.

The General Laws do not require that petitions be in a specific format, so petitioners may create their own petitions. As with any petition, it is advised that the text of the proposed question be printed on each page, along with the stated purpose to have the question placed on the next municipal election ballot.

V. VOTER INFORMATION PUBLICATIONS

Municipalities have the option of preparing, printing, and distributing publications to assist voters in understanding questions on their local ballots. Such booklets are similar in nature to the Information for Voters booklets which the secretary of the commonwealth's office is required by the Massachusetts Constitution to supply for statewide ballot questions. In order to provide local ballot question publications, municipalities must first accept the provisions of section 18B of chapter 53 of the General Laws or have a special act of the Legislature enacted on their behalf.

If the city council (with approval by the mayor, subject to the charter), town council, or board of selectmen accepts this statute, the municipality must prepare a voter information booklet containing the full text of each question appearing on the ballot, a fair and concise summary of each question, the effects of a yes vote and no vote for each questions, and arguments for and against each question. The voter information booklet must be mailed to every household containing a registered voter, no later than the seventh day before each election involving a ballot question. Once this statute has been accepted, voter information booklets must be prepared for all ballot questions in all future elections, unless the acceptance is rescinded.

In cities and towns which accept section 18B of chapter 53 of the General Laws, the city solicitor or town counsel must solicit arguments from the principal proponents and opponents of any ballot question, within seven days of the determination that the question shall appear on the ballot. The city solicitor or town counsel is also responsible a writing the fair and concise summary of each ballot question. G.L. c. 53, § 18B.