

GUIDELINES FOR
OKC INITIATIVE PETITION PROCESS
PURSUANT TO 34 O.S. 1951, §§ 1, ET SEQ.

1. The initiative (and referendum) petition procedure for Oklahoma City is set forth in Okla. Const. Art. 18, §§ 4(a)—4(e), inclusive. The Oklahoma City Charter, Article IX, § 10, adopts these constitutional provisions. The same Charter section also provides:

...Title 34, Oklahoma Statutes, **1951**, "Initiative and Referendum," and all sections thereof, are hereby adopted in full force and effect as if copied word for word in the body of this Charter; and repeal thereof shall not constitute an amendment to or removal from this Charter. (Emphasis added.)

2. Title 34 O.S. 1951, § 24, only substantial compliance required, states as follows:

The procedure herein prescribed is not mandatory, but if substantially followed will be sufficient. If the end aimed at can be attained and procedure shall be sustained, clerical and mere technical errors shall be disregarded.

“**Substantial compliance**” with the statutory procedure is therefore the standard. If there is a deviation in the procedure, what is “substantial compliance” has to be determined by the express provisions of the statute (some sections state that a deviation is fatal) or by case law. In the absence of either statutory language or case law on point, “substantial compliance” must be decided based on best judgment of the City Clerk, using the standard of whether “the end aimed at can be obtained and procedure shall be sustained, clerical and mere technical errors shall be disregarded.”

3. A “true and exact” copy of the initiative petition must be filed with the City Clerk (Clerk) before it is circulated or signed by the electors, and “no petition not filed in accordance with this provision shall be considered.” 34 O.S. 1951, § 8.
4. Upon the filing of the copy of the initiative petition with the Clerk (¶ 3 above), the Clerk must date stamp the copy so filed. (The proponents then have 3 months or 90 days w/in which to file the petitions w/signatures with the Clerk—see 34 O.S. 1951, § 2 (states “3 months”) and 34 O.S. 1951, § 8 (states “90 days”)).
5. Failure to file the signed petitions w/in the prescribed period, as described in ¶ 4 above, terminates the initiative petition. Title 34 O.S. 1951, § 8 expressly provides that “no petition not filed in accordance with this provision shall be considered.”
6. Each initiative petition shall be duplicated for the securing of signatures, and “each sheet for signatures shall be attached to a copy of the petition.” Each copy of the petition and sheets for signatures is termed a “pamphlet.” 34 O.S. 1951, § 3.

7. On the outer page of each pamphlet, shall be printed the word “WARNING,” and underneath this word certain language of warning to the signers of the initiative petition must be typed. Title 34 O.S. 1951, § 3 provides the exact wording for this WARNING.
8. “Each sheet of every such petition containing signatures shall be verified on the back thereof, in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon and as part thereof....” 34 O.S. 1951, § 6. The wording for the verification of signatures, which must be substantially followed, is set forth in 34 O.S. 1951, § 6.
9. When the pamphlets w/signatures are offered for filing, the Clerk—in the presence of the Mayor (or Vice-Mayor) and the person offering the same—shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by Initiative Petition. 34 O.S. 1951, § 4.
10. If the aforesaid signature sheets, as described in ¶ 9 above, shall be too bulky for convenient binding into one volume, they may be bound in two or more volumes, those in each volume to be attached to a single printed copy of such measure; the detached copies of such measures shall be delivered to the person offering the same for filing. 34 O.S. 1951, § 4.
11. Initiative petitions of the municipality should be consecutively numbered—*see* “Numbering of petitions,” 34 O.S. 1951, § 7. (The Oklahoma City Clerk has routinely followed this requirement; as of January 4, 2014, the City has had 31 initiative petitions filed with Clerk.)
12. After the filing of the original petitions with signatures, it is the duty of the Clerk “to forthwith cause to be published in at least one newspaper of general circulation within the [City], a notice setting forth the date of such filing.” This publication begins the 10-day protest period within which “[a]ny citizen of the [City] may, within ten days, by written notice to the [Clerk], and to the party or parties, who filed such petition, protest against the same at which time he will hear testimony and arguments for and against the sufficiency of such petition.” 34 O.S. 1951, § 8.
13. Where an initiative petition appears invalid on its face, the municipal clerk with whom it is filed may declare it insufficient for submission to a vote.¹
14. Ideally, the Clerk should make his/her own tentative determination on sufficiency or insufficiency of the petition within the 10-day protest period provided by 34 O.S. 1951, § 8, and by no later than the final day of the protest period, the Clerk should give the

¹ *Morehead v. Dyer*, 1973 OK 121, 518 P.2d 1105, 1107; and *Community Gas and Service Company v. Walbaum*, 1965 OK 118, 404 P.2d 1014, 1016-1017. While clerical and technical defects in an initiative petition are to be disregarded, a material departure from the statutory form renders an initiative petition ineffective and void. *Community Gas and Service Company v. Walbaum*, 1965 OK 118, 404 P.2d 1014, 1016.

proponents notice in writing of the Clerk’s tentative decision. No time limit for the Clerk’s determination is expressly stated in the statute; however, a tentative determination to be issued by the Clerk by the last day of the protest period is strongly advised. This decision, whether for sufficiency or insufficiency, will be tentative, because a tentative finding of “sufficient” will be subject to a possible protest filed by any citizen of the City pursuant to 34 O.S. 1951, § 8, up to 5:00 p.m. on the last day of the protest period, and a tentative finding of “insufficient” will be subject to the right of the proponents to a hearing before the City Clerk before his/her decision can become final.²

15. After the filing of the pamphlets with the Clerk—i.e., the filing of the petitions with attached signature sheets—the Clerk shall examine the face of the petition and also make a physical count of the number of (valid) signatures on the petitions.³

16. In examining the face of the petition and in determining the physical count of the (valid) signatures, it appears, **based on existing Oklahoma authorities**, that the Clerk should follow these guidelines (bolding added for emphasis):

a. **The subject matter of the petition must be “legislative,” not “administrative.” An initiative petition that encompasses “administrative” subject matter is invalid on its face.⁴ What is “administrative subject matter” is defined by various Oklahoma cases.**

The single-subject rule also applies to initiative petitions and a petition encompassing multiple subjects is invalid.⁵

If a provision in an initiative petition is unconstitutional on its face, the initiative petition is invalid.⁶

² If the Clerk believes the initiative petition is invalid on its face, for lack of sufficient valid signatures or for whatever other legal reason(s), before making a final decision on the matter, the City Clerk must give the proponents of said petition an opportunity to appear and defend the petition so presented to the Clerk. *Ruth v. Peshek*, 1931 OK 674, 5 P.2d 108, ¶ 0(2.). Accordingly, if the Clerk’s tentative decision is that the petition is invalid, the Clerk should give notice to the proponents of this tentative decision and the reasons therefore, and set the matter down for a hearing on a date certain so that the proponents may defend the petition in the face of the Clerk’s objections thereto.

³ These actions by the Clerk should likely be accomplished within the ten-day protest period provided for by 34 O.S. 1951, § 8. This is not explicitly provided for in the statutory procedure, and may not be mandatory, but it is strongly recommended that the Clerk not delay in making this determination and announce his/her tentative decision by the last day of the protest period.

⁴ *In re Initiative Petition No. 27*, 2003 OK 104, 82 P.3d 90 (initiative petition proposing change to Oklahoma City Charter held invalid because it encompassed administrative subject matter).

⁵ *In re Initiative Petition No. 382*, 2006 OK 45, 142 P.3d 400 (initiative petition violating single-subject rule held invalid).

⁶ *In re Petition No. 190*, 1949 OK 127, 207 P.2d 266 (initiative petition held invalid where it was in conflict with the Oklahoma Constitution).

- b. When the “pamphlets” are filed with the Clerk, **each sheet containing signatures must be attached to a copy of the initiative petition, with the Clerk detaching each signature sheet from the petition in the presence of the Mayor (or Vice-Mayor) and the person offering the petitions for filing** (see ¶ 9 above).

If a signature sheet is not attached to a copy of the petition when filed with the Clerk, the Clerk should keep the signature sheet separate and not include the signatures on said unattached signature sheet in his/her physical count of the total number of signatures.⁷

Any unattached signatures sheets should be set aside and clearly labeled as signature sheets not attached to a copy of the initiative petition when filed with the City Clerk. (Note that since this process takes place in the presence of the Mayor (or Vice-Mayor) and the person offering the signed petitions for filing, there should be ample witnesses available regarding which signature sheets were or were not attached to copies of the initiative petition when filed with the Clerk.)

- c. **“Each sheet of every petition containing signatures shall be verified on the back thereof...”** 34 O.S. 1951, § 6 (emphasis added). **The verification must be in substantially the form set forth in 34 O.S. 1951, § 6.**

All signatures on any sheet of any petition which is not verified on the back thereof by the person who circulated the sheet of the petition should not be counted.⁸

- d. **“Not more than 20 signatures on one sheet shall be counted.”**⁹

- e. **Illegible signatures, from which the identity of the signers cannot be ascertained, should not be counted.**¹⁰

⁷ 34 O.S. 1951, § 3 (“[e]ach sheet for signatures shall be attached to a copy of the petition”) and § 4; *Initiative Petition No. 365*, 2000 OK 47, 9 P.3d 78 (purpose of requirement that signature sheets be attached to the petition is to assure that the voters are able to conveniently examine the exact wording of the proposal); and *see* 34 O.S. 2011, § 6.1(A)(3) (copy attached for ease of reference) (all signatures on a sheet that is not attached to a copy of the petition should not be included in the count of the number of signatures on the petition).

⁸ *In re Initiative Petition No. 365*, 2001 OK 98, 55 P.3d 1048, 1052 (signatures not verified on the back of the signature sheet by the circulator who gathered such signatures must be disqualified; signatures on signature sheet that was blank on the back of the sheet disqualified; signatures on signature sheet where verification on back not signed by circulator disqualified); and *see* 34 O.S. 2011, § 6.1(A)(1)(all signatures on any sheet of any petition which is not verified by the person who circulated the sheet of the petition as provided for in said § 6 should not be included in the count of the number of signatures on the petition).

⁹ 34 O.S. 1951, § 3.

¹⁰ *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶6 501 P.2d 1089, 1091.

- f. **Signatures of persons who were not “legal voters”—i.e., persons entitled to vote, meaning registered voters¹¹—at the time they signed the petition should not be counted.¹²**
- g. **Signatures of nonresidents (based on the address given on the face of the petition) should not be counted.¹³ However, if another city or town is shown on the petition, but it can be verified by reference to voter registration records that the person is a resident of OKC, this may cure the defect.**
- h. **Signatures of a person who signs with any name other than his own should not be counted.¹⁴**
- i. **Duplicate signatures should not be counted; however, one of the duplicate signatures should be counted, if otherwise valid.¹⁵**
- j. **All signatures included in pamphlets that fail to contain on the outer page of the pamphlet the “WARNING” required by 34 O.S. 1951, § 3 should not be counted.¹⁶**
- k. **Signatures of signers on an Oklahoma City initiative petition for which a street address is not given should not be counted.¹⁷**
- l. **In addition to providing a street address, signers must provide a post office address in order to be counted. Providing the city name, simply “City” if the street address is otherwise identifiable as being within OKC, a well-known abbreviation (such as “OKC”), or the zip code is a sufficient “post office address.”¹⁸**

¹¹ *In Re Initiative Petition No. 142, State Question No. 205*, 1936 OK 209, ¶ 31-51, 55 P.2d 455 (individual signing initiative petition must be registered to vote).

¹² 34 O.S. 1951, §§ 2, 3, 6, and 23; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, dissent ¶ 9, 501 P.2d 1089, 1091.

¹³ Okla. Const. Art. 18, 4(b); 34 O.S. 1951, § 2 and 6; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 24, 501 P.2d 1089, 1091.

¹⁴ 34 O.S. 1951, § 3; and *see* 34 O.S. 2011, § 6.1(A)(6).

¹⁵ 34 O.S. 1951, § 3; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133 ¶13, 501 P.2d 1089, 1092-1093; and *see* 34 O.S. 2011, § 6.1(A)(6).

¹⁶ 34 O.S. 1951, § 3; *Community Gas and Service Company v. Walbaum*, 1965 OK 118, ¶ 9, 404 P.2d 1014; and *see* 34 O.S. 2011, § 6.1(A)(9) .

¹⁷ 34 O.S. 1951, §§ 2 and 6; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 15, 501 P.2d 1089, 1093.

- m. **Signatures are invalid where the notary public taking the circulator’s acknowledgment has not signed the verification form or when the notary public’s commission has expired.¹⁹ However, the absence of the notary seal or the failure of the notary to indicate when the commission expires are mere technical defects.²⁰**
- n. **Signatures are invalid where the circulator has attempted to take his own acknowledgment.²¹**
- o. **Failure of the circulator to list his post office address makes the signatures defective. Just the city name is not sufficient as a post office address for a circulator.²² A city name plus a zip code likely is sufficient as a post office address for a circulator. However, a 1946 case appears to say that where the post office address of a circulator is otherwise shown on the pamphlets, then the defect is cured. Ref. *In re Initiative Petition No. 224, 1946, OK 215, § 14, 172 P.2d 324* (“¶14 Evidence relating to finding No. 15(j) discloses that in some instances the circulators failed to state their post office addresses on the affidavit page of the pamphlets, but did sign as petitioners on the pamphlets and after their names as petitioners did state their post office addresses. These were held by the Referee to disclose the addresses of the circulators and were counted as in substantial compliance with statutory requirements. In other instances the addresses of the circulators were nowhere disclosed on the pamphlets. These pamphlets and the signatures thereon were excluded as invalid. We think this conclusion by the Referee properly applied the rule announced.”).**

¹⁸ 34 O.S. 1951, §§ 2 and 6; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 16-17, 501 P.2d 1089, 1093. While *Oklahomans* does not discuss whether a zip code itself is a sufficient post office address, it would be consistent with the Oklahoma Supreme Court’s reasoning in that case that technical violations which do not prejudice a contesting party are permissible.

¹⁹ 34 O.S. 1951, § 6; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 18, 501 P.2d 1089, 1093; and see 34 O.S. 2011, § 6.1(A)(7).

²⁰ *In re Initiative Petitions No. 224-226*, 1946 OK 215, ¶¶ 18-19, 172 P.2d 324.

²¹ 34 O.S. 1951, § 6; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 18, 501 P.2d 1089, 1093.

²² 34 O.S. 1951, § 6; *In Re Initiative Petition No. 272, State Question No. 409*, 1963 OK 285, ¶ 14-15 (circulator must give post office address; signer must give both street address and post office address; nothing less is substantial compliance), 388 P.2d 290, citing *In re Initiative Petition No. 142, etc.*, 1936 OK 209, ¶¶ 27-28 (circulator must give post office address and nothing less is substantial compliance); 55 P.2d 455, 458, *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 19, 501 P.2d 1089, 1093.

- p. **Signatures are invalid where the circulator's verification was before a notary public whose commission had expired.**²³
- q. **Failure of the notary public to list his post office address is a mere technical defect which must be disregarded and the signatures must be counted.**²⁴
17. Issues with the initiative petition form and/or signatures other than those listed above which arise in the course of examining a petition will need to be researched as needed.
18. After determining the form and sufficiency or insufficiency of the petition and/or the signatures, the Clerk should notify the proponents of his/her tentative decision thereon by the last day of the protest period.
19. Further proceedings at that point, or in the event of a protest being filed by a citizen of Oklahoma City pursuant to 34 O.S. 1951, § 8, shall proceed as set forth in Title 34, 1951 Edition, as adopted verbatim by Oklahoma City Charter, Article IX, § 10.

²³ 34 O.S. 1951, § 6; *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 18, 501 P.2d 1089, 1093.

²⁴ 34 O.S. 1951, § 6; *In Re Initiative Petition No. 272, State Question No. 409*, 1963 OK 285, ¶ 13, 388 P.2d 290, citing *In Re Initiative Petition No. 224, State Question No. 314*, 1946 OK 215, ¶ 18-19, 197 Okl 432, 435, 172 P.2d 324; *In Re Initiative Petition No. 347, State Question 636*, 1991 OK 55, Fn. 10, 813 P.2d 1019.