OFFICE OF THE CITY CLERK

REPORT

To The Honorable Mayor And City Council

DATE: JULY 2, 1997   REPORT NO: 97-03 (Rev.)

SUBJECT: PROPOSED AMENDMENTS TO CHAPTER II, ARTICLE 7, DIVISION 26
           OF THE SAN DIEGO MUNICIPAL CODE RELATING TO REFERENDUM

ISSUE

Division 26 of the San Diego Municipal Code, relating to the Referendum process, was
first adopted in 1968 and only minor amendments have been made since that time.
During the recent referendum, the Clerk became aware of the need to revise this
ordinance.

RECOMMENDATION

Adopt the amendments to the Municipal Code as proposed.

FISCAL IMPACT

The proposed amendments to the Municipal Code will result in some cost savings.
Staff time required to review and process supplemental petitions, as well as the
contract costs to verify supplemental petitions, will be eliminated. Staff time required to
witness circulator signatures, an accepted alternative to notarization, will be eliminated.
Finally, because of the potential for litigation on the notary issue, approving these
amendments will result in an avoidance of such litigation costs.

DISCUSSION

Sections 27.2601 through 27.2620 of the Municipal Code establish procedures for the Referendum. These provisions were adopted in 1968 and only minor amendments have been made since that time.

Because of the recent referendum, the Clerk has become aware of the need to revise this ordinance.

Changes are recommended to: eliminate provisions for supplemental petitions; clarify voter signature requirements and format of the petition to facilitate the verification process; clarify several steps in the process; eliminate the unnecessarily prohibitive and expensive requirement that the circulator affidavit be notarized; and make certain housekeeping amendments. Additionally, sections have been re-organized and re-numbered to provide a more logical sequence.

Specifically, the proposed changes include the following:

a. Amended Sections 27.2601 ("Subjects of Referendum") and 27.2602 ("Number of Signatures Required for Referendary Petition") contain minor housekeeping amendments.

b. New Section 27.2603 ("Time to Begin Circulating Referendary Petition") clarifies when circulation of a referendary petition may begin.

c. Amended Section 27.2604 ("Contents of Referendary Petition") combines all references to contents into one code section. It also requires that petition forms shall be furnished by the proponents.

d. Amended Section 27.2605 ("Form of Referendary Petition") contains a portion of existing Section 27.2606 and makes certain housekeeping amendments.

e. Amended Section 27.2606 ("Form of Statement of Reasons for Referendary Petition") clarifies a portion of existing law contained in current Section 27.2605.

f. New Section 27.2607 ("Form of Voter Signature Sheets for Referendary Petition") clarifies and enhances existing law contained in current Section 27.2607. It makes amendments to the petition format and adds the requirement that there be a space for the voter's printed name and a space for the Clerk's use in verifying signatures.

g. Amended Section 27.2608 ("Signing Voter's Information for Referendary Petition") clarifies some of the existing law contained in current Section 27.2610. It

provides that each voter who signs the petition must also personally affix his or her printed name. References to the date of signing have been deleted.

h. Amended Section 27.2609 ("Form of Affidavit of Authenticity for Referendary Petition") eliminates the requirement that the circulator's signature be notarized. It provides instead that the circulator shall sign under penalty of perjury. It also requires that the circulator indicate and attest to the beginning and ending dates of circulation of the petition. This parallels Initiative provisions of the Municipal Code and petition requirements in state law.

i. Amended Section 27.2610 ("Signatures on Referendary Petition") clarifies existing law contained in current Section 27.2609.

j. Amended Section 27.2611 ("Withdrawal of Signature from Referendary Petition") clarifies current Section 27.2614. It deletes references to the supplemental petition and changes the deadline for submitting a withdrawal to the same deadline as that for submitting the referendary petition.

k. Amended Section 27.2612 ("Time for Submitting Referendary Petition") is a re-numbering of current Section 27.2603 and makes certain housekeeping amendments.

l. New Section 27.2613 ("Submitting Referendary Petition; Acceptance or Rejection of Petition") eliminates the supplemental petition and clarifies the Clerk's responsibilities. This change will not diminish the ability of proponents to file a referendary petition, but will simplify administration of the filing of petitions. It will also be consistent with Initiative provisions of the Municipal Code and Charter Amendment requirements under state law.

m. Amended Section 27.2614 ("Verification of Referendary Petition; Time; Random Sampling") deletes references to the supplemental petition and makes certain housekeeping amendments to clarify existing law contained in current Section 27.2611.

n. Amended Section 27.2615 ("Notice of Sufficiency of Referendary Petition") is a re-numbering of current Section 27.2612. It eliminates references to the supplemental petition and clarifies that the Clerk will present the certified petition to the Council at the next regular Council meeting at which the matter can be placed on the docket. It also provides that the Council may address the matter at a special meeting called for that purpose.

o. Amended Section 27.2616 ("Notice of Insufficiency of Referendary Petition") is a re-numbering of current Section 27.2613. It eliminates references to the supplemental petition and clarifies existing law. A portion of existing Section 27.2613 states that if a

petition is found insufficient, a new petition addressed to the same matter may be filed, if done so during the same thirty-day period. This portion has been deleted because it is unnecessary. The filing of such a petition would be allowed under existing provisions of the Municipal Code and would be accepted if filed within the proper time-frame.

p. New Section 27.2617 ("Challenges to the Determination of Sufficiency or Insufficiency of the Referendary Petition") eliminates references to the supplemental petition and clarifies provisions of existing law contained in a portion of current Section 27.2611.

q. Amended Section 27.2618 ("Suspension of Legislative Act") clarifies provisions of existing law contained in current Section 27.2604. It eliminates references to the supplemental petition.

r. Amended Section 27.2619 ("Action by City Council") clarifies provisions of existing law contained in current Section 27.2615. It specifies that the ten day period, during which the Council must reconsider the legislative act, begins when the matter is presented by the City Clerk to the Council at a City Council meeting.

s. Amended Section 27.2620 ("Legislative Act to be Submitted to Voters") enhances existing law contained in current Section 27.2616. It creates two separate Council actions in an effort to clarify the process. If the Council refuses to grant the petition to repeal the legislative act, the Council would then: adopt a resolution of intention to submit the matter to the voters at a special election; and direct the City Attorney to prepare an ordinance calling the special election.

t. New Section 27.2621 ("Time for Special Election") clarifies when a special election must take place if the Council adopts a resolution of intention to submit the matter to the voters.

u. Amended Section 27.2622 ("Effective Date of Legislative Act Following Election") is a re-numbering of current Section 27.2617 with minor housekeeping amendments.
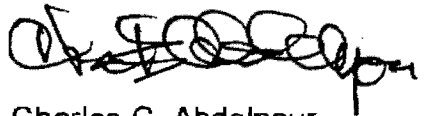
v. Amended Section 27.2624 ("Referendary Election to Conform to other Elections") contains minor housekeeping amendments.

SUMMARY

In summary, the City Clerk proposes these changes to the Municipal Code in order to update and clarify provisions of the Referendum process, including changes to eliminate the supplemental petition, clarify the voter signature requirements and

petition format to facilitate the verification process, and eliminate the unnecessarily prohibitive and expensive requirement that the circulator affidavit be notarized. The Division has also been re-organized and re-numbered to provide a more logical sequence.

I look forward to your consideration of these amendments and, as always, should you have any questions or comments, I would be pleased to respond.

Charles G. Abdelnour
City Clerk

CGA:JL

Attachment

DIVISION 26 - REFERENDUM ---PROPOSED AMENDMENTS, JUNE 1997

SEC. 27.2601 Subjects of Referendum

Any legislative act, except acts making the annual tax levy, _making_ the annual appropriations, calling or relating to elections, or relating to emergency measures, shall be subject to the referendum _process_.

SEC. 27.2602 Number of Signatures Required for Referendary Petition

~~No~~ A referendary petition ~~shall~~ may not be ~~submitted~~ presented to the City Council unless it contains the signatures of at least five percent of the voters.

SEC. 27.2603 Time to Begin Circulating Referendary Petition

A referendary petition may not be circulated until the first calendar day following the exercise of the final legislative act by the City Council.

SEC. 27.2605 27.2604 Contents of Referendary Petition

~~A referendary petition shall set forth the questioned legislative act in full, and shall be followed by a statement containing, in three hundred words or less, the reasons for the petition. The statement must be signed by the individual proposing the petition or, in the case of an organization, by two officers.~~

(a)Referendary petition forms shall be furnished by the proponents.
(b)The petition shall consist of sheets of white paper uniform in size with dimensions no smaller than 8-1/2 by 11 inches or greater than 8-1/2 by 14 inches.
(c)The petition shall consist of any number of sections. Each section shall contain items one (1) through four (4) in the order specified:
    (1) First, a sheet, or sheets, setting forth the questioned legislative act in full. It shall be printed in clear, readable type no less than 10-point.
    (2) Second, a statement of reasons for the petition. It shall be printed in clear, readable type no less than 10-point.
    (3) Third, a voter signature sheet, or sheets. Any number of voter signature sheets may be incorporated into a petition section.

(4) Fourth, an affidavit of authenticity to be filled out in accordance with Section 27.2609 and signed by the voter who circulated the petition.
(d)The sheets comprising each petition section shall be fastened together securely and remain so during circulation for signatures and submittal.

SEC. ~~27.2606~~ 27.2605 **Form of** Referendary Petition

Any referendary petition shall be in substantially the following form:

Referendary Petition

Referendum Against a Legislative Act Passed and Adopted by The City Council of The City of San Diego

To the Honorable City Council of The City of San Diego:

We, the undersigned~~,~~ registered voters of The City of San Diego, California, hereby present this petition to the City Council of The City of San Diego, California, and ask that the City Council repeal, ~~or rescind~~ or ~~that it~~ submit to the registered voters of the City for their approval or rejection that ~~legislation~~ legislative act ~~passed and~~ adopted by the City Council ~~of The City of San Diego~~, on the _____ day of _____of which the following is a full and correct copy:

(Here insert full title and text of the measure to be referred, followed by the accompanying statement of reasons.)

_____
Signature of Proponent   Residence   Date

~~(Note: If an organization is seeking review of to refer of a legislative act, the statement shall be signed by two officers of the organization.)~~

SEC. 27.2606 **Form of Statement of Reasons for Referendary Petition**

The statement of reasons shall set forth the reasons for the referendary petition. It shall contain no more than three hundred words. The word count shall be calculated in accordance with City Clerk's guidelines. The statement shall be signed by the individual proposing the petition or, if the proponent is an organization, by two officers of the organization.

SEC. 27.2607 Form of Voter Signature Sheets for Referendary Petition

(a) Voter signature sheets shall be arranged and lined to provide space for the voter's signature, voter's printed name and place of voter's residence. A space at least one inch wide shall be left blank, on the right hand side of the sheet, for the use of the City Clerk in verifying the petition.

(b) Signature sheets shall be in substantially the following form:

NAME   RESIDENCE   (CLERK'S USE ONLY)

_____

SIGN _____

PRINT _____   _____

SIGN _____

PRINT _____   _____

SEC. 27.2608 Signing Voter's Information for Referendary Petition

Signatures shall be executed by voters in their own handwriting ~~Voters must indicate~~ and each signer shall also affix his or her printed name, and place of residence, including street and house number, or other designation from which the location of the place of residence ~~can~~ may be readily ascertained. Post office box numbers, business addresses, or mailing addresses are not permitted and, if used, shall make that voter's signature invalid. ~~The date of execution must also be indicated by voters.~~

SEC. ~~27.2608~~ 27.2609 Form of Affidavit of Authenticity — ~~Referendum~~ for Referendary Petition

~~Each referendary petition shall have attached to it an~~ The affidavit of authenticity ~~of a voter, in~~ shall have the following form:

AFFIDAVIT

   COUNTY OF SAN DIEGO)
   STATE OF CALIFORNIA) ss.

Under penalty of perjury I, (printed name of circulator), declare: ~~being~~

~~duly sworn, deposes and says:~~

That I am a registered voter of The City of San Diego and that all of the signatures on each ~~sheet~~ petition section were made in my presence and were observed by me, and that all of the sheets constituting this ~~paper~~ petition section were fastened together at the time such signatures were ~~appended thereto~~ made; and that to the best of my knowledge and belief such signatures are the genuine signatures of the persons who~~se names~~ purport to ~~be hereunto subscribed,~~ have signed the petition; and that the signatures were obtained between:

_____ and _____
(Beginning date of circulation)   (Final date of circulation)

_____
  (Circulator's   (Circulator's   (Circulator's   (Date signed
   Printed Name)   Signature)   Residence)   By Circulator)

_____
_____
~~   (Residence)   (Signature)~~
~~ Subscribed and sworn to before me this_____ day of_____~~
_____
~~   (Signature of Officer)   (Title of Officer)~~

SEC. ~~27.2609~~ 27.2610 Signatures on Referendary Petition

(a) Only voters may sign a referendary petition. Signatures of signers who are not voters shall be invalid.
(b) The City Clerk shall only count valid signatures. ~~Signatures invalidated by the Clerk may not be counted.~~

SEC. ~~27.2614~~ 27.2611 Withdrawal of Signature from Referendary Petition

Any person ~~signing~~ who has signed a referendary petition ~~or supplemental petition~~ may withdraw his or her signature by filing a written request bearing his or her name, address and signature in the office of the City Clerk prior to the deadline for submitting that petition under Section 27.2612. ~~time the petition or supplemental petition containing his signature is filed.~~

SEC. ~~27.2603~~ 27.2612 Time for ~~Filing~~ Submitting Referendary Petition

A referendary petition may be ~~filed in~~ submitted to the Office of the

City Clerk any time within thirty (30) calendar days after the exercise of a the final legislative act by the City Council.

SEC. 27.2613 Submitting Referendary Petition; Acceptance or Rejection of Petition

(a) The referendary petition shall be submitted to the Office of the City Clerk by the proponent of the referendum or by any person authorized in writing by the proponent. All sections of the petition shall be submitted at one time. The City Clerk shall not accept a petition that is not in substantial compliance with this Division.

(b) When the petition is submitted, the City Clerk shall determine that day the total number of signatures affixed to the petition.

(1) If the City Clerk determines that the number of signatures, prima facie, equals or is greater than the minimum number required, the City Clerk shall accept the petition as filed.

(2) If the City Clerk determines that the number of signatures, prima facie, is less than the minimum number required, the City Clerk shall reject the petition and treat it as not filed.

(c) Any sections of the petition not filed in accordance with Section 27.2613 shall be void for all purposes.

SEC. ~~27.2611~~ 27.2614 Verification of Referendary Petition; Time; Random Sampling

(a) The City Clerk shall be allowed a period of thirty (30) calendar days after the filing of a referendary ~~the last-filed portion of a referendary~~ petition to examine and verify the signatures of the ~~petitioners~~ signers. ~~He shall indicate on each petition the date on which it was filed and the name of the person by whom it was filed.~~

(b) Signatures may be verified by use of the random sampling method set forth in Section ~~3708~~ 9115 of the California Elections Code.

SEC. ~~27.2612~~ 27.2615 Notice of Sufficiency of Referendary Petition

If the City Clerk finds a referendary petition, ~~including, if filed, a supplemental petition,~~ to contain the requisite number of valid signatures and to be in proper form, ~~he~~ the City Clerk shall so certify and shall send a notice of sufficiency to ~~a representative of~~ the proponents of the referendum. ~~Without delay the~~ The City Clerk shall then present the petition, with ~~his~~ the certification attached, to the City Council at the next regular City Council meeting at which the matter can be placed on the docket. The City Council may also address

the matter at a Special Meeting called for that purpose.

SEC. ~~27.2613~~ **27.2616 Notice of Insufficiency of Referendary Petition**

If the City Clerk finds a referendary petition~~,~~ ~~including, if filed, a supplemental petition,~~ to contain less than the requisite number of valid signatures or to be in improper form, ~~he~~ the City Clerk shall so certify and shall send a notice of insufficiency to ~~a representative of~~ the proponent~~s~~. ~~A petition, and a supplemental petition, if found to be insufficient, does not preclude, within the thirty-day period, the filing of a new petition addressed to the same matter.~~

SEC 27.2617 Challenges to the Determination of Sufficiency or Insufficiency of the Referendary Petition

~~In the event that~~ (a)Any ~~elector~~ voter of the City of San Diego may challenge~~s~~ the determination of the sufficiency or insufficiency of the signatures determined by ~~on the petition by~~ the random sampling method~~,~~, provided by Section 27.2614, ~~The City Clerk shall proceed to verify the sufficiency of each signature on the petition if the elector~~ by submitting a written request to the City Clerk.
(b) Any ~~so challenging~~ voter making a challenge must post~~s~~ with the City Clerk such amount of money as is required to fully pay the cost of ~~such~~ further verification.
(c) ~~A~~ Any ~~such~~ challenge ~~of the verification by the random sampling method~~ and posting of the required payment shall be made no later than the close of business on the fourth (4th) calendar day following announcement of the sufficiency or insufficiency of signatures.
(d) If the challenge is received and the required payment is made within the time specified, the City Clerk shall proceed to verify the sufficiency of each signature on the petition.

SEC. ~~27.2604~~ **27.2618 Suspension of Legislative Act**

(a)If a referendary petition ~~and, if applicable, a supplementary petition have~~ has been accepted as filed, the legislative act shall ~~not become effective~~ be suspended until the date on which the City Clerk issues a notice of insufficiency; or if the petition is found to be sufficient, until the legislative act is approved by the voters and becomes effective in accordance with Section 27.2622.
(b)If the City Clerk issues a notice of insufficiency, ~~in which case~~ the legislative act shall become effective immediately; ~~provided, however, that in~~ or if the legislative act ~~case of~~ is an ordinance, it shall become effective a minimum of thirty (30) calendar days ~~has elapsed since the date of~~ after ~~the~~ its adoption ~~of the ordinance~~ by the

City Council.
(c)If the City Clerk issues a certificate of sufficiency, the legislative act shall ~~not~~ become effective in accordance with Section 27.2622. ~~until after the election.~~

SEC. ~~27.2615~~ 27.2619 Action by City Council

If the petition is presented to the City Council by the City Clerk, at a City Council meeting held in accordance with Section 27.2615, the City Council must within ten (10) working days reconsider the legislative act in question.

SEC. ~~27.2616~~ 27.2620 Legislative Act to be Submitted to Voters

If the City Council refuses to grant the petition to repeal the legislative act in question or fails to reconsider the act within ten (10) working days after presentation by the City Clerk, the City Council shall: ~~forthwith~~
(a)adopt a resolution of intention to submit the matter to the ~~people~~ voters at a special election; and
(b)direct the City Attorney to prepare an ordinance calling the special election.

SEC. 27.2621 Time for Special Election

(a) If a special election is called, it shall be held within eleven (11) months of the adoption of the resolution of intention to submit the matter to the voters. ~~However, if~~
(b) If there is any other city-wide election ~~or elections for any purpose at which all the voters are entitled to vote are~~ scheduled to be held within eleven (11) months from the date of the adoption of the resolution set forth in 27.2620(a), ~~the referendary petition is presented to the City Council,~~ then the City Council may at its discretion submit the ~~proposed~~ legislative act to the voters at ~~any one of such other~~ that ~~elections~~ elections.

SEC. ~~27.2617~~ 27.2622 Effective Date of Legislative Act

If a majority of the voters voting on a legislative act of the City Council approve that act, it shall be deemed adopted on the date the City Council adopts its resolution declaring the results of the election. ~~Such~~ The legislative act shall be effective ten (10) calendar days after the date ~~such~~ the resolution is adopted unless an earlier date is specified in ~~such~~ the resolution.

~~**SEC. 27.2618 All Petitions on One Subject to be Counted as One Petition**~~

~~If more than one referendary petition, including any supplemental petitions, are~~ is ~~filed with respect to one legislative act, all valid signatures shall be counted as if but one petition and one supplemental petition, if appropriate, had been filed.~~

SEC. ~~27.2619~~ <u>27.2623</u> Referendary Election Not Limited to One Legislative Act

Any number of legislative acts may be submitted to the people at any one election by the referendary process.

SEC. ~~27.2620~~ <u>27.2624</u> Referendary Election to Conform to other Elections

<u>To the extent practicable,</u> ~~T~~ <u>t</u>he <u>City</u> Clerk shall conduct the referendary election in a manner conforming with other elections. ~~to the extent practicable~~