



## OFFICE OF THE CITY CLERK

# REPORT

**TO THE HONORABLE MAYOR AND CITY COUNCIL**

DATE: January 26, 2011

REPORT NO.: 11-01

SUBJECT: DOCKETING OF REFERENDARY PETITION –ORDINANCE O-20007

On December 29, 2010, a representative of proponent T.J. Zane filed with my office a referendary petition to repeal Ordinance O-20007 (Ordinance to Protect Small and Neighborhood Businesses). The petition was filed “within thirty calendar days after the exercise of the final legislative act by the City Council,” as required by Municipal Code section 27.1117.

The City Clerk’s Office accepted the referendary petition as filed, in accordance with Municipal Code section 27.1119. Therefore, the ordinance was suspended, pursuant to Municipal Code section 27.1130(a). The City Clerk’s Office conducted the required prima facie review of the signatures submitted, and delivered the referendary petition to the Registrar of Voters for signature verification.

On Tuesday, January 25, 2011, the Registrar of Voters completed its verification of the petition signatures and provided the City Clerk with formal certification of the results. The Registrar of Voters found the petitions contain the valid signatures of over five percent of the City’s registered voters at the last general election, as required by Charter section 23. This qualified the legislative act for either: (1) repeal by the City Council, or (2) direct submission to the electorate at a special election (see attached City Clerk Certificate).

The Council’s possible actions on a referendary petition are set forth in Municipal Code section 27.1131. That section states in part that if the petition is presented to the City Council by the City Clerk at a Council meeting, the City Council “shall within ten business days reconsider the legislative act in question.” Municipal Code section 27.1132 provides that if the City Council refuses to grant the referendary petition to repeal the legislative act, or fails to reconsider the act

within the prescribed time frame, the Council shall, within ten business days of the date of refusal or of the deadline for action, whichever is earlier: (a) adopt a resolution of intention to submit the matter to the voters at a special election; and (b) direct the City Attorney to prepare an ordinance calling a special election to place the matter on the ballot.

The timing of such a special election is discussed in Municipal Code section 27.1133. That section specifies that the special election must be held within eleven months of the adoption of the resolution of intention to submit the matter to the voters. It also provides that the special election may be consolidated with any other City-wide election scheduled to be held within that time. Should the Council wish to submit the matter to the voters, we will provide you with a timeline.

The Council would need to hold another hearing to call the election, which must be done at least three months before the election to comply with state law. Based on the most recent estimate from the Registrar of Voters, we anticipate that the cost of a ballot measure placed on a stand-alone special polls election ballot would be between \$2.8 million and \$3.4 million.

The Registrar also estimated that the cost of a City stand-alone vote-by-mail election would be between \$1.1 million and \$1.4 million. The City's sole experience with a mail-only ballot special election occurred in 1981. In the three decades since this event, changes in voter registration size, postage rates and election requirements make it difficult to draw relevant conclusions from that data. It should also be noted that a mail-only election cannot be consolidated with a special polls election.

In summary, when a referendary petition is presented to Council by the Clerk at a Council meeting, the Council may, within ten business days:

1. Grant the referendary petition to repeal the legislative act in question; or
2. Reject the petition to repeal the legislative act, adopt a resolution of intention to hold a special election, and direct the City Attorney to prepare an ordinance calling an election to place the matter on the ballot. The election must be held within eleven months from the date the Council adopts the resolution of intention to submit the matter to the voters; or
3. Take no action within ten business days of the Clerk's presentation of the petition to the Council at a Council meeting. If this occurs, the Council has ten business days from the date of its refusal of the referendary petition or its deadline to take action to reconsider the act, to then adopt a resolution of intention to submit the matter to the voters, and direct the City Attorney to prepare an ordinance to call a special election.

Finally, the City Attorney's Office has opined that California Elections Code section 9241 should be used for guidance in City referendum matters. City Att'y MOL 97-9 (Mar. 5, 1997). Elections Code section 9241 states that, if the Council repeals the ordinance, or if it submits it to the voters and a majority of voters do not vote in favor of it, the ordinance "shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters."

If you have questions, please contact me at (619) 533-4080 or my Deputy Director, Bonnie Stone, at 533-4060.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Maland". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Maland" clearly distinguishable.

Elizabeth Maland  
City Clerk

Attachment (City Clerk's Certificate)

cc: City Attorney  
Chief Operating Officer