



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON ECONOMIC DEVELOPMENT AND INTERGOVERNMENTAL RELATIONS

DATE: JULY 30, 2014

REPORT NO.: 14-05

SUBJECT: PROPOSED AMENDMENTS TO SAN DIEGO MUNICIPAL CODE
RELATED TO RECALL, CHAPTER 2, ARTICLE 7

ISSUE

In continuing last year's review of the various elections-related sections of the Municipal Code and the City Charter that would benefit from examination and possible update, potential changes to Chapter 2, Article 7 of the San Diego Municipal Code are presented below for your consideration.

The City Clerk and City Attorney have worked together to identify a number of areas where the recall provisions could be improved by clarifying and making procedures consistent with other City petition processes, and by updating the code based on changes in state law. There are three different types of proposed changes included in this report:

1. Those changes that are housekeeping in nature or propose superficial formatting or grammatical changes to the Municipal Code itself;
2. Changes that result from the creation of separate "City Clerk Administrative Guidelines," which will contain many of the formatting, font and spacing requirements associated with this petition process. This proposal recommends removing these elements from the Municipal Code so that they can be more readily managed by the Office of the City Clerk without requiring legislative intervention;
3. A policy decision about a proposed change to the number of days allowed for the circulation of the recall petition, and the removal of the supplemental petition.

A strikeout version of the proposed ordinance prepared by the City Attorney is being submitted separately as part of this item, but this report will summarize each of the changes listed above by section.

HOUSEKEEPING/FORMATting CHANGES

The following sections of the Municipal Code contain no substantive changes to content, number of days or deadlines. The changes are meant to clarify content or create grammatical and/or internal consistency:

- §27.2701 Officials Subject to Recall
- §27.2702 Petition to be Filed with Clerk
- §27.2703 Petition Addressed to Only One Official **[This is a new section; however, the language it contains is taken from existing language in §27.2702.]**
- §27.2704 Number of Signatures required **[Formerly §27.2703. Language was added referencing the number of registered voters at the last General Election; this was taken directly from City Charter Section 23: Initiative, Referendum and Recall.]**
- §27.2705 Signatures on Petition **[Formerly §27.2713. This was moved for consistency and flow.]**
- §27.2706 Notice of Intention **[Formerly §27.2704.]**
- §27.2707 Affidavit of Publication **[Formerly §27.2705. Clarify that “ten days” is “ten calendar days.”]**
- §27.2708 Service of Notice on an Official **[Formerly §27.2706. Otherwise no change.]**
- §27.2709 Official’s Answer **[Formerly §27.2707. Adds timeframe for proponent publication of response (5 calendar days).]**
- §27.2710 Circulation of Petition **[Formerly §27.2708.]**
- §27.2711 Contents of Petition **[Formerly §27.2709.]**
- §27.2713 Form of Affidavit of Authenticity for Recall Petitions **[Formerly §27.2712. Language was updated to reflect current law.]**

- §27.2714 Signing Voter's Information for Recall Petition
- §27.2716 Verification of Petition; Time; Random Sampling **[Clarifies that the number of days is calendar days.]**
- §27.2717 Notice of Sufficiency
- §27.2718 Notice of Insufficiency
- §27.2719 Withdrawal of Signature **[Formerly §27.2721.]**
- §27.2720 Special Election to be Called **[Formerly §27.2722.]**
- §27.2721 Time for Special Election **[Formerly §27.2723. Changed timeframe to be consistent with changes to the City Charter made as a result of voters passing Proposition A in the June 3, 2014 Primary Election.]**
- §27.2722 Recall Election to Conform to Other Elections **[Formerly §27.2724.]**
- §27.2723 Contents of Recall Ballots **[Formerly §27.2725.]**
- §27.2724 Reelection or Reappointment Prohibited for One Year **[Formerly §27.2727.]**
- §27.2725 Separate Ballot Required **[Formerly §27.2728.]**
- §27.2726 Officer to Serve Until Declaration of Results **[Formerly §27.2729.]**
- §27.2727 Cancellation of Election if Office Becomes Vacant **[Formerly §27.2730.]**
- §27.2728 Highest Number of Votes Determines Candidate Elected **[Formerly §27.2731.]**
- §27.2729 Election for Unexpired Term of Officer Recalled **[Formerly §27.2732.]**

CITY CLERK ADMINISTRATIVE GUIDELINES

(See Attachment A for a draft of the City Clerk Administrative Guidelines)

- §27.2711 Form of Voter Signature for Recall Petition **[Removed from Municipal Code and included in the City Clerk Administrative Guidelines.]**
- §27.2712 Recall Petition **[Formerly §27.2710. Removed from Municipal Code and included in the City Clerk Administrative Guidelines.]**

POLICY DECISION: CIRCULATION DAYS/SUPPLEMENTAL PETITION

§27.2715 Time for Filing Petition

The current Municipal Code allows a recall petition to be filed in the office of the Clerk within 60 days of the notice of intention to circulate a recall petition. Municipal Code §27.2719 and §27.2720 also allow for the submission of supplemental petitions, which allows for an additional 30 days.

It is recommended that a single circulation period be established for a recall petition, eliminating current provisions for a supplemental petition.

No other petition process in the Municipal Code permits supplemental petitions. In addition, thirty (30) of the thirty-three (33) municipalities contacted in an effort to benchmark recall best practices, do not allow for supplemental petitions to be submitted. The majority of the municipalities contacted (twenty-five of the thirty-three) simply follow State Election Code, which does not allow a supplemental petition to be filed (see Attachment B).

Options for a single circulation period were benchmarked and details pertaining to the California Elections Code and the City of Los Angeles in comparison to the City of San Diego are detailed in Attachment C.

SUMMARY

In summary, with this report, the City Clerk requests:

1. Approval for the housekeeping changes that have been proposed;
2. Approval of the concept of removing the formatting details pertaining to the petition itself from the Municipal Code and placing them in the "City Clerk Administrative Guidelines;"
3. Guidance regarding the policy decision related to the circulation period and the removal of the supplemental period.



Elizabeth Maland
City Clerk

Attachments

City Clerk
Administrative
Guidelines

City of San Diego

Elizabeth Maland, City Clerk

Updated 7/2014

SECTION 4 – RECALL PETITIONS

400. GENERAL PROVISIONS.

(a) The purpose of these guidelines is to provide procedures and specifications of Referenary Petitions circulated by proponents for submission to the City Clerk.

(b) The City Clerk shall, at all times, apply and interpret the provisions of San Diego Municipal Code (SDMC) and the guidelines included here in a manner consistent with the regulatory purpose of these guidelines.

(c) The guidelines set forth here shall apply only to Recall Petitions being circulated for for elective offices in the City of San Diego.

(d) Whenever, the word "should" is used in these guidelines, it is recommended, not mandatory.

401. RECALL PETITION (SDMC §27.2710)

The petition shall consist of sheets of white paper uniform in size with dimensions no smaller then 8-1/2 by 11 inches or greater than 8-1/2 by 14 inches. If the petition contains more than one sheet of paper, it shall be fastened together securely. The recall petition shall be in the following form:

RECALL PETITION

PETITION FOR THE RECALL OF

FROM THE OFFICE OF

(The title in the form prescribed above with the blank spaces filled in shall be set forth in full at the top of each page of the petition.)

The following are the reasons for demanding such recall:

(Here insert a copy of the published notice of intention and accompanying statement and the answer, if any. If the officer has not answered, a statement to that effect shall be inserted here.)

Signature of Proponent	Residence	Date
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(Note: If an organization is seeking the recall of an officer the statement shall be signed by two officers of the organization.)

402. FORM OF VOTER SIGNATURE SHEETS FOR RECALL PETITION (SDMC §27.2711)

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

(b) Above the signature portion of each voter signature sheet, the following language shall appear in clear, readable type no smaller than 12-point in size:

"NOTICE TO THE PUBLIC THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR BY A VOLUNTEER. YOU HAVE THE RIGHT TO ASK."

(c) The signature portion of the sheet shall be in substantially the following form:

Name	Residence	Date	Clerk's Use Only
1. Sign			
2. Sign			
3. Sign			

(NOTE: Recall Petitions for Mayor, City Attorney and those Councilmembers elected by City- wide vote may be signed by any voter of the City. Recall Petitions for Councilmembers who were elected by district vote may be signed only by voters within the district represented by the Councilmember.)

403. FORM OF AFFIDAVIT OF AUTHENTICITY FOR RECALL PETITION (SDMC §27.2712)

The *circulator's* affidavit of authenticity shall have the following form: AFFIDAVIT OF AUTHENTICITY (COUNTY OF SAN DIEGO) STATE OF CALIFORNIA)

} ss.

Under penalty of perjury I, (printed name of *circulator*), declare: That all of the signatures on the voter signature sheets of this petition section were made in my presence and were observed by me; that all of the sheets constituting this petition section were fastened together at the time such signatures were made; that, to the best of my knowledge and belief, such signatures are the genuine signatures of the individuals who signed the petition; and that the signatures were obtained between:

(Beginning date of circulation)

and

(Final date of circulation)

(Circulator's Printed Name) (Circulator's Signature

DRAFT

List of Charter Cities who use State Process	Charter Cities who Follow State Law for the petition process some may have different percentage requirements. follows local law to fill vacancy:	Charter Cities who have own recall process:
<p>Adelanto (pop. 31,153) Alameda (pop. 73,812) Albany (pop. 19,192) Anaheim (pop. 336,265) Bakersfield (pop. 347,483) Big Bear Lake (pop. 5,116) Buena Park (pop. 82,155) Burbank (pop. 104,391) Carlsbad (pop. 109,319) Chula Vista (pop. 243,916) Del Mar (pop. 4,161) Fresno (pop. 509,924) Glendale (pop. 194,478) Huntington Beach (pop. 189,992) Irvine (pop. 211,906) Long Beach (pop. 462,257) Modesto (pop. 203,547) Oakland (pop. 390,724) Oceanside (pop. 167,086) Riverside (pop. 303,871) Sacramento (pop. 466,488) Santa Ana (pop. 324,428) San Marcos (pop. 83,650) Santa Cruz (pop. 59,948) Vista (pop. 93,854)</p>	<p>San Francisco (pop. 805,235) Follows local law for filling vacancy</p>	<p>Berkeley (pop. 112,580) (75 days circulation period and they do accept supplemental within 15 days of notification of insufficiency.) 25% of registered voters.</p>
	<p>San Jose (pop. 945,942) – Charter dictates that 12% of the registered voters must be gathered. Follows local law for filling vacancy.</p>	<p>Los Angeles (pop. 3,792,621) (120 circulation period, supplemental only allowed if there is time remaining on the 120 days after the petition is deemed insufficient. No signatures can be gathered during the time the City Clerk is verifying signatures.) Circulation begins the 28th day after the first public notice and the last day to file petition is 120th day after the first day to begin circulation. 15% of registered voters.</p>
	<p>Stockton (pop. 298,118) – Charter has a hybrid where they follow State Law for the process except where differences listed in Charter. Charter states 20% of registered voters must sign to be sufficient.</p>	<p>San Diego (pop. 1,301,621)</p>
	<p>Downey (pop. 113,242)– Follows state law for recall process, but election to fill vacancy if recall is successful is held after the recall election.</p>	<p>Alhambra (pop. 31,203) number of registered voters needed on the petition is 25% of the total vote cast at the last preceding general municipal election and the circulation period is 40 days.</p>
		<p>San Bernardino (pop. 209,959) 15% citywide or Councilmember 25% of the ward. 90 day circulation period. Allows for Supplemental with an extended time of 30 days to gather signatures if petition is deemed insufficient.</p>

What	City http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf
Proponent(s)	Proponent – 1 person or if Organization – 2 officers	The number of signers shall be 10 or equal to the number of signatures required to be filed on the nomination paper of the officer sought to be recalled, whichever is greater. Each proponent must be a registered voter in the electoral jurisdiction;	A Recall petition may be filed only by a committee of five proponents who shall be registered voters of the City, or applicable district if the officer sought to be recalled is a member of the City Council or Board of Education. EC 718
Notice of Intention	name and office of the person sought to be recalled and 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) the name and title of the officer to be recalled; (b) a statement, not over 200 words in length, of the reasons for recall; (c) the printed name, signature, & residence address of each of the proponents. If a proponent cannot receive mail at his or her residence address, the Notice of Intention must also contain his or her mailing address. The number of signers shall be 10 or equal to the number of signatures required to be filed on the nomination paper of the officer sought to be recalled, whichever is greater. Each proponent must be a registered voter in the electoral jurisdiction; (d) the provisions of EC §11023, which permit incumbents who are the subject of recall to file an answer to the notice & prescribes the method for doing so.	(a) The following heading: “Notice of Intent to Recall [insert name and title of officer whose recall is sought]. (b) The names of the proponents (c) The heading “Statement of Reasons” – 300 words (d) Affidavit signed and dated by one or more of the proponents stating that all of the facts contained in the Statement of Reasons are true.

What	City http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf
Serve Official with Notice of Intent	Within 5 days of publication	Within 7 days of publication	Before publication of notice of intent, must be served to the officer being sought. Proof of service must be filed with the City Clerk within two business days after serving the official
File proof of publication with Election Official	Within 10 days of publication	At the same time proponent files the two blank petitions with Elected Official	Publication to take place within 14 days of service on officer, proof of publication filed with Clerk within 2 business days of publication.
Answer of Recallee	Within 14 days of publication of NOI.	Within 7 days of filing of NOI.	Within 21 days - Official or anyone on behalf of the Official may publish an Answer
Words allowed for answer	300	200	300 words
Must answer be published by proponent	Yes	No	Published by official not proponent.
Must answer be a part of Petition	Yes	Yes	Yes, if one was filed
File blank petition with Election Official for approval of petition	N/A	Two blank petitions must be filed with the Election Official within 10 days after answer is filed, or if no answer is filed within 10 days after the 7 day deadline has passed.	2 blank petitions filed with Clerk before circulation for Clerk approval regarding form & content. States Clerk will notify proponent in writing "without delay"

What	City http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf
Time for Election Official to deem petition sufficient/insufficient		10 days	"without delay"
If petition is deemed insufficient, time proponent must fix deficiencies		10 days	Within 10 days after receiving notification
Amount of signatures required for a sufficient petition	15% of the registered voters for the jurisdiction/office being recalled	Based on registered voters: (a) Thirty percent if the registration is less than 1,000. (b) Twenty-five percent if the registration is less than 10,000 but at least 1,000. (c) Twenty percent if the registration is less than 50,000 but at least 10,000. (d) Fifteen percent if the registration is less than 100,000 but at least 50,000. (e) Ten percent if the registration is 100,000 or above.	15% of the registered voters for the jurisdiction/office being recalled
When proponent can begin circulating petition	21 days after the publication date	Once the Election Official deems the petition sufficient	28 days after the publication date of the Notice of Intention (the petition also must be deemed sufficient by the Clerk)

What	City http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf
When must proponent file petition	60 days after the publication date	Based on registered voters: <ol style="list-style-type: none"> 1. 40 days if the electoral jurisdiction has less than 1,000 registered voters. 2. 60 days if the electoral jurisdiction has less than 5,000 registered voters but at least 1,000. 3. 90 days if the electoral jurisdiction has less than 10,000 registered voters but at least 5,000. 4. 120 days if the electoral jurisdiction has less than 50,000 registered voters but at least 10,000. 5. 160 days if the electoral jurisdiction has 50,000 registered voters or more⁹. (§11220) 	120 days after the “first day to circulate” regardless of when the form of the petition is approved by the City Clerk
Supplemental allowed	Yes (If insufficient, proponent is allowed 30 days from the date of insufficiency to file supplemental petitions)	No	Yes* it appears that it is allowed if the petition has been filed and deemed insufficient the proponent has 10 days to turn in supplemental, as long as this all happens before the 120 day deadline (no extension to gather more signatures). Also, during the time the Clerk is verifying signatures, signatures can't be gathered.

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Who can circulate	The Municipal Code states the circulator must be a registered voter of the jurisdiction. (CA has already determined that it is not the case due to the Law Suit and Attorney General Opinion.	<p>SOS guidelines (last updated in 2007) states:</p> <p>The declaration must also include: (a) that the circulator circulated that section and witnessed the appended signatures being written;</p> <p>(b) that according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be;</p> <p>(c) that the circulator is a registered voter in the electoral jurisdiction of the officer sought to be recalled;</p> <p>(d) that the circulator certifies to the content of the declaration as to its truth and correctness, under penalty of perjury. The circulator shall state the date and the place of execution on the declaration along with his or her signature.</p> <p>(§§322, 11045)</p>	Circulator must be 18 years old.

What	City http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf
Time for Election Official to verify petition	30 calendar days after filing	30 days after filing	<p>Within 30 City Business days after final acceptance of the petition*.</p> <ol style="list-style-type: none"> a. City Clerk first issues a “conditional acceptance of filing. b. City clerk review petition to determine if all petition pages have completed Circulator Affidavits and enough signatures. c. If there are petition pages with deficient pages of circulator affidavits, City Clerk provides proponent 2 business days to correct deficiency.

What	City http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf
If petition is valid – Time for election	If a special election is called, it shall be held not less than sixty (60) days after adoption of the ordinance calling the election but not later than ninety (90) days after such adoption. For an official elected by City-wide vote, if any other election for any purpose at which all voters in the City of San Diego are entitled to vote is called to be held within one hundred twenty (120) days from the date the recall petition is presented to the Council, then the Council may, at its discretion, submit the recall proposal and election of a successor at the latter election. For a Councilmember who was elected by district vote, if any other election for any purpose at which the voters in the district represented by the Councilmember are entitled to vote is to be held within one hundred twenty (120) days from the date the recall petition is presented to Council, then the Council may, at its discretion, submit the recall proposal and election of a successor at the later election. §27.2723	The election shall be held not less than 88 nor more than 125 days after the issuance of the order, and if a regular or special election is to be held throughout the electoral jurisdiction of the officer sought to be recalled within such time period, the recall election shall be held on the same day and consolidated with the regular or special election. (§11242)	not less than 60 days nor more than 110 days after the date of Council action on the petition; provided, however, that if any other election for any purpose at which all the qualified voters of the City, of the Council District, or of the Board District, as the case may be, are entitled to vote, is to occur during that time period, the Council shall order the holding of the recall election and the consolidation thereof with such other election.
			If recall is successful, candidate receiving the majority of the votes will win, if not candidate receives majority of votes, then run-off election will occur and top two candidates will be placed on ballot.