OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON ECONOMIC DEVELOPMENT AND INTERGOVERNMENTAL RELATIONS

DATE: September 5, 2014 REPORT NO.: 14-06

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

ISSUE

At the July 30, 2014, Economic Development and Intergovernmental Relations Committee Meeting, potential changes to Chapter 2, Article 7 of the San Diego Municipal Code were presented and direction was given to return with specific recommendations for changes to the current process related to the number of proponents, the supplemental petition, the circulation period and the timing of a recall petition. These proposed amendments are discussed below.

CURRENT PROCESS

Officials Subject to Recall

Municipal Code §27.2701 allows for any elected official who has held office for six (6) months or more, and against whom no recall petition has been filed within the preceding six (6) months to be recalled by a majority vote of the voters in San Diego (for a city-wide elected position) or in the district represented by the Councilmember.

Proponents

Municipal Code §27.2704 identifies the proponent as an "individual proposing the petition, or in the case of an organization, by two officers."

The proponent is not required to reside in or be a registered voter in either the district (for the recall of a Councilmember) or in the City of San Diego (for a citywide elected position).

Time for Filing Petition

Municipal Code §27.2715 allows a recall petition to be filed in the Office of the Clerk within 60 days of the publication of the notice of intention to circulate a recall petition.

Supplemental Petition

Municipal Code §27.2719 and §27.2720 allow for the submission of a supplemental petition, which must be filed within 30 days of the Notice of Insufficiency.

Total Circulation Time

The total maximum amount of time a proponent could have to circulate a petition is **99 days:**

- **39 days** – (Notice of Intention is published, 21 days are then allotted for publication, affidavit and response, then petitions are allowed to be circulated and can be circulated for 39 days) +:

- **Up to 30 additional days** – (The proponent can continue circulating the petition while the Registrar of Voters verifies the signatures that were submitted; the proponent may wish to do so in anticipation of a possible insufficiency. The Registrar has 30 days to verify signatures, but may not use all of this allotted time.) +;

- **Another 30 days** – (If a petition is deemed insufficient, the proponent is allowed 30 days to gather signatures that can be filed as a supplemental petition.)

(Attachment A provides a detailed comparison of the entire recall process for the City of San Diego in comparison to the State and the City of Los Angeles)

PROPOSED PROCESS

Officials Subject to Recall (Proposed Change Prohibiting Recall in Final 6 Months of a Term)

Any elected official who has held office for six (6) months or more, and who has more than six (6) months remaining in his or her term, and against whom no recall petition has been filed within the preceding six (6) months may be recalled by a majority vote of the voters in San Diego (for a city-wide elected position) or in the district represented by the Councilmember.

Proponents (Proposed Increase to Number of Required Proponents)

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 (See Attachment B for benchmarking related to the number of Proponents).

Time for Filing Petition (Proposed Change to Total Number of Days to Circulate)

A recall petition shall be filed in the office of the City Clerk within 120 days after the publication of the notice of intention to circulate a recall petition.

Supplemental Petition (Proposed Elimination)

There would be no supplemental petition process which would be consistent with all other sections of the Municipal Code addressing petition processes (Charter Amendment, Initiative, Referendum, Candidate Nominating). No other City of San Diego petition process allows for the submission of a supplemental petition.

Total Circulation Time

The total maximum amount of time a proponent could have to circulate a petition is **99 days**.

This breaks down as follows:

There would be 120 days from date of publication of Notice of Intention minus the twenty-one days (21) allotted for publication, affidavit, response (§27.2708) = **99 days**

WHEN A PETITION IS SUFFICIENT

Although we have proposed few substantive changes to the process when a notice of sufficiency has been issued, it is valuable to walk through the process and identify the one change that is being proposed.

The Clerk presents the Notice of Sufficiency to the Council "without delay" (§27.2717).

The Council shall immediately call a special election to recall the official, and if the recall is successful, to elect a successor (§27.2722).

The current Municipal Code specifies the time for this special election to be held no less than sixty (60) days after adoption of the ordinance calling the special election but not later than 90 days after such adoption unless an election is being held within the City of San Diego within one hundred twenty (120) days where the voters of the specific district – or if citywide – where all the voters in San Diego are entitled to vote (§27.2723). This report recommends changing this section of the Municipal Code as follows: "If a special election is called, it shall be held not less than ninety (90) days after the adoption of the ordinance calling the election but not later than 180 days after such adoption." This change would make the timeframe consistent with Charter Section 12 as it relates to filling a vacancy on the legislative body through special election; as well as Charter Section 265 which addresses filling a vacancy of the Mayor through Special Election.

Recall ballots shall contain the name and office of the official whose recall is sought and the names of the persons nominated to succeed the official whose recall is sought (§27.2725).

An elected official whose recall is sought shall continue to perform the duties of his or her office until the Council has adopted its resolution declaring the results of the election which shows that a majority of the qualified voters voted in favor of the recall (§27.2729).

If a majority of voters approves the recall, the candidate who receives the highest number of votes for the office will be declared the winner whether or not the highest number constitutes a majority of the votes cast (§27.2731).

There is currently no provision in the Municipal Code for a run-off election. Such a run-off election would add several months to the process for filling the seat (90 – 180 days consistent with the process outlined above, and up to 28 days for Election Certification by the Registrar of Voters).

CONCLUSION

Proposed substantive changes to the current recall process include:

1. Prohibiting a recall process in the last six (6) months of an elected official's term since the length of the process would make a recall redundant with the opportunity to vote-in new representation.
2. Increasing the required number of proponents and requiring voter registration and residence in the appropriate district (or in the City of San Diego for city-wide office holders).
3. Eliminating the supplemental petition process to create internal consistency with other City of San Diego petition processes.
4. As a result of the elimination of the supplemental petition process, updating the circulation period to 120 days to create a process both consistent with the current recall process, and to create a process that places the City of San Diego better in step with best practices statewide.

Elizabeth Maland
City Clerk

Attachments

COMPARISON OF RECALL PROCESS

What	San Diego Current Process http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State Process http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles Process **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
Nomination Signatures	100 for District 200 for City Wide	Each candidate shall be proposed by not less than **20 nor more than 30 voters** in a city of 1,000 registered voters or more, and not less than five nor more than 10 voters in a city of less than 1,000 registered voters, but only one candidate may be named in any one nomination paper. (EC § 10220)	500 signatures.
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, and 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 Elections Code §11023, which permit incumbents who are the subject of recall to file an answer to the notice and 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.
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

ATTACHMENT A

COMPARISON OF RECALL PROCESS

What	San Diego Current Process http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	State Process http://www.sos.ca.gov/elections/recalls/recall.pdf	Los Angeles Process **http://clerk.lacity.org/stellent/groups/departments/@clerk_elections_contributor/documents/contributor_web_content/lacityp_023255.pdf**
File proof of publication with Election Official	Within 10 days of publication	At the same time proponent files the two blank petitions with Election 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.	Two blank petitions must be filed with Clerk before circulation to receive approval from Clerk regarding form and content. Does not specify how long, states Clerk will notify proponent in writing "without delay"
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 deemed sufficient by the Clerk)***

COMPARISON OF RECALL PROCESS			
What	**San Diego Current Process** http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division27.pdf	**State Process** http://www.sos.ca.gov/elections/recalls/recall.pdf	**Los Angeles Process** **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: **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.**
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.	SOS guidelines (last updated in 2007) states: The declaration must also include: (a) that the circulator circulated that section and witnessed the appended signatures being written; (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; (c) **that the circulator is a registered voter in the electoral jurisdiction of the officer sought to be recalled**; (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. **(§§322, 11045)**	Circulator must be 18 years old.

COMPARISON OF RECALL PROCESS

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		The circulator must personally affix his or her printed name and residence address and the specific dates of circulation of each petition section in every circulator's affidavit. Preprinted dates, or generalized dates other than the particular range of dates on which the petition section was circulated are not authorized. **(§§104, 11046)**	
Time for Election Official to verify petition	30 calendar days after filing	30 days after filing	Within 30 City Business days after final acceptance of the petition*. 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.
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.** 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… §**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.

Recall Comparative Chart

Jurisdiction	State / Local	Proponents	Required Nominating Signatures	Proponent required to be part of jurisdiction	Circulation Period	% of signatures required
San Francisco (pop. 805,235)	Hybrid	20	20	Yes	160 days (State)	10% (State)
San Jose (pop. 945,942)	Hybrid	50	50	Yes	160 days (State)	12%
Stockton (pop. 298,118)	Hybrid	10	10	Yes	160 days (State)	20%
Downey (pop. 113,242)	Hybrid	20	20	Yes	160 days (State)	10%
Berkeley (pop. 112,580)	Local	1	20	Yes	75	25%
Los Angeles (pop. 3,792,621)	Local	5	500	Yes	120	15%
San Diego (pop. 1,301,621)	Local	1 or 2 if from Org.	100 for Council; 200 for Citywide	No	60*	15%
Alhambra (pop. 31,203)	Local	1	20	Yes	40	25%
San Bernardino (pop. 209,959)	Local	1 to 5	20	Yes	90	15% Citywide; 25% Council

List of Charter Cities who use State Process for Recall and Nomination (number of proponents required for recall)

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;*

All jurisdictions below would require 20 proponents.

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)

ATTACHMENT B