



## FACT SHEET ON RECALL ELECTIONS

In the City of San Diego, the publication of a notice of intention to circulate a recall petition triggers the presumption of a recall election. In other words, the City's campaign laws presume that a recall election will take place unless the proponents fail to obtain the necessary number of petition signatures. Candidates and committees involved in the recall election before, during, and after the signature gathering process are subject to the City's campaign finance laws discussed in this fact sheet.

### General Rules

- ❖ The City of San Diego treats recall elections as candidate elections, unlike the state, which characterizes such elections as ballot measure elections. For this reason, the City's laws concerning recall elections differ somewhat from those at the state.
- ❖ As set forth in more detail below, the officeholder who is the subject of the recall and replacement candidates are subject to contribution limits. On the other hand, committees that make independent expenditures to support or oppose the recall or replacement candidates are not subject to contribution limits. Such committees include the recall proponents, other committees created to independently support or oppose the recall effort, and committees created to independently support or oppose the candidacy of one or more replacement candidates.
- ❖ City resources may not be used to support or oppose the recall effort, or to support or oppose any replacement candidates. City resources include City staff time, equipment, supplies, facilities, web space, mailing lists, e-mail contacts, or similar resources. A City Council office may not, for example, provide a list of constituent e-mail addresses to a committee seeking to disseminate a campaign message regarding the recall election.
- ❖ Candidates, their committees, and City Officials may not knowingly solicit campaign contributions from City employees. The term "City employees" includes all paid City officers and employees, as well as the paid officers and employees of the City's agencies (Civic San Diego; San Diego Housing Commission; San Diego Data Processing Corporation; and San Diego Convention Center Corporation).
- ❖ City employees may, however, sign a recall petition and volunteer their personal time to support or oppose the recall effort or the candidacies of replacement candidates.
- ❖ Candidates and committees that disseminate campaign materials concerning the recall must include the requisite "paid for by" disclosure in such communications. Please refer to the Ethics Commission's Fact Sheet on Campaign Advertising for more information.
- ❖ Committees that are not controlled by the subject of the recall or a replacement candidate may coordinate their expenditures without making in-kind contributions to each other. For example:
  - ✓ Walt is the proponent of a recall effort. He forms a committee and prints hundreds of copies of the recall petition. Hank forms a separate committee to support the recall effort

and uses copies of the petition prepared by Walt's committee. Hank's committee obtains 10,000 signatures and gives the signed petitions to Walt's committee. Walt combines them with his committee's own signed petitions and submits all of them to the City Clerk. In this scenario, the two committees will disclose their own expenses on their campaign statements; they will not be required to disclose making or receiving in-kind contributions to/from the other committee.

- ✓ The Coalition of Small Businesses, a county general purpose committee, invites its members to a rally supporting a recall petition drive. At the rally, signatures are obtained and forwarded to the recall proponent's committee. The Coalition will report the costs of the rally as expenditures on its campaign statements. Although the recall proponent's committee benefited from the signatures, it is not required to report the rally expenses as in-kind contributions from the Coalition.

### **Officeholder Subject to Recall**

- ❖ To oppose the recall, an officeholder may establish a new committee by filing a Form 410 with the Secretary of State, and a copy with the City Clerk. The committee's name must include the word "recall" and the officeholder's name. (An officeholder subject to recall is not required to file a Form 501 Candidate Intention Statement in connection with the recall election.)
- ❖ The officeholder may accept contributions from individuals subject to contribution limits (\$550 for district officeholders and \$1,050 for citywide officeholders). Contributions from corporations, partnerships, organizations, or other types of non-individuals, other than political parties, are not permitted.
- ❖ A political party committee may contribute up to \$10,300 to a district officeholder or \$20,650 to a citywide officeholder in connection with a recall election.
- ❖ An officeholder's recall committee must file a Form 460 with the City Clerk on a semi-annual basis until it terminates. If the City Council sets a date for the recall election, the officeholder's recall committee will also be required to:
  - ✓ file a Form 460 and a pre-election Form 497 in accordance with the pre-election filing schedule published by the City Clerk; and,
  - ✓ file a Form 497 within 24 hours of receiving monetary contributions totaling \$1,000 or more from any contributor during the 90 days leading up to the election.
- ❖ Funds remaining in an officeholder's committee will become "surplus" and subject to the surplus funds rules established under state and local law in the following circumstances:
  - ✓ if the petition drive fails and there is no actual recall election, the funds remaining in the committee will become surplus when the officeholder eventually leaves elective office;
  - ✓ if there is an actual recall election and the officeholder is not recalled, the funds remaining in the recall committee will become surplus when the officeholder eventually leaves elective office; and,

- ✓ if there is an actual recall election and the officeholder is recalled, the funds remaining in the recall committee will become surplus at the end of the semi-annual reporting period.

## **Replacement Candidates**

- ❖ Replacement candidates may declare their candidacy and open a committee after a recall proponent has published a notice of intention to circulate a recall petition. Such candidates must file a Form 501 Candidate Intention Statement prior to soliciting or receiving any contributions.
- ❖ If a replacement candidate will be accepting \$1,000 or more in contributions, he or she must establish a committee by filing a Form 410 with the Secretary of State and a copy with the City Clerk. The committee's name must include the candidate's last name, the office sought, and the anticipated year of the election (the Form 410 must be amended if the City Council ultimately schedules the recall election in a different year).
- ❖ A replacement candidate may accept contributions from individuals subject to contribution limits (\$550 for district offices and \$1,050 for citywide offices). Contributions from corporations, partnerships, organizations, or other types of non-individuals, other than political parties, are not permitted.
- ❖ A political party committee may contribute up to \$10,300 to a district candidate or \$20,650 to a citywide candidate in connection with a recall election.
- ❖ A replacement candidate's committee must file a Form 460 with the City Clerk on a semi-annual basis until it terminates. If the City Council sets a date for the recall election, the replacement candidate's committee will also be required to:
  - ✓ file a Form 460 and a pre-election Form 497 in accordance with the pre-election filing schedule published by the City Clerk; and,
  - ✓ file a Form 497 within 24 hours of receiving monetary contributions totaling \$1,000 or more from any contributor during the 90 days leading up to the election.
- ❖ Funds remaining in a replacement candidate's committee will become "surplus" and subject to the surplus funds rules established under state and local law in the following circumstances:
  - ✓ if the petition drive fails and there is no actual recall election, the funds remaining in the replacement candidate's committee will become surplus at the end of the semi-annual reporting period;
  - ✓ if there is an actual recall election and the officeholder is not recalled, the remaining funds will become surplus at the end of the semi-annual reporting period;
  - ✓ if there is an actual recall election and the officeholder is recalled but the replacement candidate is not elected to office, the remaining funds will become surplus at the end of the semi-annual reporting period; and,
  - ✓ if there is an election resulting in the recall of the officeholder, and the replacement candidate is elected to office, the remaining funds will become surplus when he or she eventually leaves elective office.

- ❖ If a replacement candidate does not assume elective office for any of the reasons described above, he or she may carry over leftover funds to a subsequent campaign for the same elective office so long as this is done prior to the funds becoming surplus. To accomplish this, for example, a replacement candidate in a Council district recall election would either:
  - ✓ redesignate his or her recall committee as a committee seeking elective office in the next regularly scheduled election (or special election if one is imminent) for the same Council district seat; or,
  - ✓ create a new committee for the next regularly scheduled election (or special election if one is imminent) for the same Council district seat.
  - ✓ Under both of the above scenarios, the candidate may carry over leftover non-surplus funds to the new or redesignated committee. Funds that are carried over for a subsequent election do not count toward the contribution limits applicable to that election.

### **Primarily Formed Recipient Committees**

- ❖ This section pertains to committees primarily formed to support or oppose a recall effort as well as committees primarily formed to support or oppose a replacement candidate.
- ❖ These committees must file a Form 410 with the Secretary of State, and a copy with the City Clerk.
  - ✓ A committee primarily formed to support or oppose a recall must include the following in its committee name: the name of the officeholder subject to recall and whether the committee is in support of or opposition to the recall.
  - ✓ A committee primarily formed to support or oppose a replacement candidate must include the following in its name: the last name of each candidate whom the committee supports or opposes, the office sought, the anticipated year of the election, and whether the committee supports or opposes the candidate (the Form 410 must be amended if the City Council ultimately schedules the recall election in a different year).
  - ✓ These committees are not required to include the economic or other special interest of their major donors of \$50,000 or more in their committee names.
- ❖ These committees are not subject to contribution limits. They may accept any amount of monetary and non-monetary contributions from any source, including non-individuals.
- ❖ A committee primarily formed to support or oppose a recall may also spend money to support or oppose a replacement candidate. A committee primarily formed to support or oppose a replacement candidate may also spend money to support or oppose the recall effort. However, it is important to remember that primarily formed committees supporting the recall or supporting a replacement candidate are prohibited from coordinating any of their expenditures with a replacement candidate.
- ❖ These committees must identify on their advertisements the names of their top two contributors of \$10,000 or more. Advertisements include mailings, door hangers, flyers, and yard signs in quantities of 200 or more; telephone communications in quantities of 500 or more; billboards;

Internet ads; and newspaper ads. Advertisements do not include the recall petitions used by signature gatherers. For more information, please refer to the Ethics Commission's Fact Sheet on Campaign Advertising and its Fact Sheet on Disclosure Requirements for Committees with \$10,000 Donors.

- ❖ A primarily formed recipient committee must file a Form 460 with the City Clerk on a semi-annual basis until it terminates. If the City Council sets a date for the recall election, a primarily formed recipient committee will also be required to:
  - ✓ file the Form 460 and a pre-election Form 497 in accordance with the pre-election filing schedule published by the City Clerk;
  - ✓ file a Form 497 within 24 hours of receiving monetary contributions totaling \$1,000 or more from any contributor during the 90 days leading up to the election; and,
  - ✓ file a Form 496 within 24 hours of making independent expenditures of \$1,000 or more during the 90 days leading up to the election.

### **Officeholder Resignation Before Recall**

- ❖ In the event the officeholder subject to recall resigns from office before the recall election takes place, a separate special election will be called to fill the vacancy. Committees involved in the recall effort may shift their focus to the special election by amending their Forms 410.
- ❖ Replacement candidates in the recall election may either redesignate their committees for the special election or establish new committees for the special election. In either scenario, the candidates may carry over leftover non-surplus funds to the new or redesignated committee; such funds will not count toward the contribution limit for the special election.
- ❖ Replacement candidates participating in the recall election who wish to run as candidates in the special election must also file a new Form 501 Candidate Intention Statement before soliciting or accepting contributions for the special election.
- ❖ All of the above actions may take place upon the resignation of the officeholder, even before the City Council officially calls the special election.

For additional information, please contact the Ethics Commission at (619) 533-3476.

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