



## FACT SHEET ON RECALL ELECTIONS

In the City of San Diego, the publication of a notice of intention to circulate a recall petition will trigger 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, contribution limits apply to the officeholder who is the subject of the recall, and they also apply to replacement candidates. 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 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, and 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 (San Diego Housing Commission 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.
- ❖ 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.
- ❖ The officeholder subject to recall, replacement candidates, and committees spending money to support or oppose the recall and/or replacement candidates must identify themselves in "Ad paid for by" disclosures on their advertisements, include mass mailings, door hangers, flyers, yard signs, television and radio ads, telephone communications, and internet ads. Recall petitions used by signature gatherers are not considered "advertisements." For more information regarding the City's campaign advertisement rules, please refer to the ethics commission's advertisement fact sheets.

### **Officeholder Subject to Recall**

- ❖ An officeholder subject to recall may open a controlled campaign committee to oppose the recall effort after (1) a recall proponent has published a notice of intention to circulate a recall petition regarding the officeholder, or (2) a committee has filed a Form 410 for the purpose of recalling the officeholder.
- ❖ The officeholder may create the committee by filing a Form 410 with the Secretary of State and a copy with the City Clerk. The new committee's name must include the word "recall" and the officeholder's name. (An officeholder subject to recall is not required to file a candidate intention statement [Form 501] in connection with the recall election.)
- ❖ The officeholder may accept contributions from individuals subject to contribution limits (\$750 for district officeholders and \$1,350 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 \$13,450 to a district officeholder or \$26,800 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 (or within 48 hours of receiving non-monetary contributions) totaling \$1,000 or more from any contributor during the 90 days leading up to the election.
- ❖ After the failure of the recall petition, or after the recall election, any funds remaining in the officeholder's recall committee's campaign account will immediately become "surplus" and subject to the City's surplus funds rules.

## **Replacement Candidates**

- ❖ A candidate seeking to replace an officeholder who is the subject of a recall may begin soliciting and accepting campaign contributions after (1) a recall proponent has published a notice of intention to circulate a recall petition regarding the officeholder, or (2) a committee has filed a Form 410 for the purpose of recalling the officeholder. Replacement candidates must file a candidate intention statement (Form 501) before soliciting or receiving any contributions.
- ❖ If a replacement candidate will be accepting \$2,000 or more in contributions, he or she must establish a controlled 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 (\$750 for district offices and \$1,350 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 \$13,450 to a district candidate or \$26,800 to a citywide candidate in connection with the 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 (or within 48 hours of receiving non-monetary contributions) totaling \$1,000 or more from any contributor during the 90 days leading up to the election.
- ❖ After the failure of the recall petition, or after the recall election, any funds remaining in a replacement candidate's campaign account will immediately become "surplus" and subject to the City's surplus funds rules.

## **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 by making independent expenditures.
- ❖ 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 subject to contribution limits. They may accept any amount of monetary and non-monetary contributions from individuals and non-individuals, including corporations, partnerships, and other committees.
- ❖ 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 and/or supporting a replacement candidate are prohibited from coordinating any of their expenditures with the officeholder subject to recall or with any replacement candidates.
- ❖ 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 a 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 (or within 48 hours of receiving non-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. A committee makes an independent expenditure when it pays for a communication that expressly advocates for or against the recall of an officeholder, or expressly advocates for or against the election of a replacement candidate.

## **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 not use leftover “surplus” funds for the special election.
- ❖ Replacement candidates participating in the recall election who wish to run as candidates in the special election must file a new Form 501 Candidate Intention Statement before soliciting or accepting contributions for the special election.

For additional information, please contact the ethics commission at (619) 533-3476.

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