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February 10, 2005

REPORT TO THE COMMITTEE ON RULES, FINANCE
AND INTERGOVERNMENTAL RELATIONS

PROPOSED REVISIONS TO THE SAN DIEGO MUNICIPAL CODE REGARDING
WRITE-IN CANDIDATES

INTRODUCTION

At the Committee on Rules, Finance and Intergovernmental Relations [Rules Committee] meeting on February 2, 2005, the Rules Committee considered a discrepancy between the City Charter and the San Diego Municipal Code [SDMC] concerning the permissibility of write-in candidates in City run-off elections.¹ Following discussion, the Rules Committee directed the City Attorney to return with proposed revisions to the SDMC that would prohibit write-in candidates in municipal run-off elections.

DISCUSSION

The proposed revisions are attached in revised and strike-out versions and can be separated into three categories. First, SDMC section 27.0301 currently states: "Write-in candidates are permitted in municipal elections including special elections called by the City Council pursuant to Section 27.0107." The proposed revision to section 27.0301 would state that write-in candidates are permitted only in the municipal primary elections and recall elections:²

§27.0301 General Provisions for Write-in Candidates

Write-in candidates are only permitted in District Primary Elections, City-wide Primary Elections, primary Special Elections, and recall Elections called by the City Council pursuant to Section 27.0107 of this article. Write-in candidates are not permitted in District General Elections, City-wide General Elections, or run-off Special Elections.

Second, we have proposed housekeeping revisions necessary to eliminate references to write-in candidates in District and City-wide General Elections in the sections on nomination papers for write-in candidates (SDMC §§ 27.0305, 27.0308, 27.0315). Third, we have made revisions necessary to ensure the consistency of terminology when referring to: (i) the inclusion of the write-in candidate's name on the ballot in the general election if that candidate is chosen as one

¹ See, City Attorney Report to Rules Committee dated February 1, 2005.

² There is no run-off in a recall election because the highest number of votes determines the winner. SDMC § 27.2731.

of the two candidates to have their name appear on the ballot (SDMC § 27.0323); and (ii) the counting of write-in votes. (SDMC § 27.0636).

The proposed revisions to SDMC section 27.0636 also eliminate reference to *Canaan v. Abdelnour*, 40 Cal. 3d 703 (1985), the California Supreme Court case that had required the City to allow write-in candidates in run-off elections, but was overruled by *Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164 (2002). The proposed revision to section 27.0636 states:

§27.0636 Counting of Write-In Votes

Write-in candidates are permitted in *District Primary Elections*, *City-wide Primary Elections*, primary *Special Elections*, and recall *Elections*. Any name written upon a ballot, including a reasonable facsimile of the spelling of such name, shall be counted for the office for which it was written, if it is written in the blank space provided therefore, unless prohibited by the provisions of Section 27.0637 of this article.

Current SDMC section 27.0636 is the subject of ongoing litigation regarding how ballots are counted when the City's municipal election is consolidated with a state-wide election. Additionally, we are advised that changes to the California state law on the counting of write-in ballots (California Elections Code section 15342) are pending in the state legislature. Until these issues are resolved and a thorough analysis has been completed, we recommend that only the above proposed revision be made.

Finally, an issue has been raised regarding whether the City can prohibit write-in candidates in run-off elections for municipal offices when the election is consolidated with a state-wide election because California Elections Code section 15340 provides: "Each voter is entitled to write the name of any candidate for any public office, including that of President and Vic President of the United States, on the ballot of *any election*." (emphasis added). The California Supreme Court in *Edelstein* addressed this issue stating:

In this case, however, we need not apply this framework for resolving municipal-affairs and statewide-concern questions. Prohibiting write-in voting in runoff elections would not violate section 15340 even if San Francisco were not a charter city. Section 15340 gives voters the right to write in the names of candidates in "any election." In the election in question, the San Francisco mayoral election of 1999, voters had the opportunity to write in the names of candidates once, in the first round of voting; they simply did not have the opportunity to do so a second time, in the runoff. This satisfied section 15340 because there was a single election, although there were two rounds of voting. *Id.* at 173-74.

Similarly, the proposed revisions to the SDMC give voters the opportunity to write in the names of candidates in the primary, or first round, of the election. If a candidate receives the majority of the votes, there is no run-off election. If there is a run-off election, that would constitute the

second round of voting for a single election to a municipal office. According to the rationale in *Edelstein*, the City's proposal to allow write-in candidates in the primary elections would satisfy the intent of California Elections Code section 15340.

CONCLUSION

At this time, the SDMC expressly permits write-in candidates in all elections, including both the primary and general elections. However, this arguably conflicts with the Charter provision that has been interpreted as prohibiting write-in candidates in the general election. This SDMC provision is no longer required as a result of *Canaan* being overruled by *Edelstein*. The proposed revisions to the SDMC address this discrepancy by providing that write-in candidates are permitted only in municipal primary elections. While these proposed revisions will help eliminate inconsistencies, several other housekeeping revisions should be made to the City's election code. These revisions will be addressed in a separate report at a later time.

Respectfully submitted,

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CMB:jb
Attachments
RC-2005-3