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REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

AMENDMENT TO THE SAN DIEGO MUNICIPAL CODE REGARDING THE TIMING OF ELECTIONS FOR REFERENDED LEGISLATIVE ACTS

INTRODUCTION

The San Diego Municipal Code (SDMC) provides a process for exercising the right of referendum. Generally, if the City Council passes an ordinance, a petitioner may gather required signatures to have the Council repeal the ordinance or place the matter before the voters. If the Council declines to repeal the ordinance, the Council is required to call a special election within eleven months of the resolution of intention to submit the matter to the voters. SDMC § 27.1133.

The Committee on Rules, Open Government and Intergovernmental Relations has asked whether this eleven-month requirement can be removed from the Municipal Code so that the Council has the option of placing the matter before the voters at the next regularly scheduled City-wide election. As discussed below, the Council may adopt an ordinance to accomplish this result.

DISCUSSION

The San Diego Charter reserves the powers of initiative and referendum to the people of the City. San Diego Charter § 23. Section 23 provides that the Council shall include in the City's election code "an expeditious and complete procedure for the exercise by the people of the initiative, referendum and recall . . ." (*See also*, San Diego Charter § 8). The City's election code for the referendum process is found in SDMC sections 27.1101 through 27.1140 and other related election provisions.

SDMC section 27.1133 provides that an election on a referended legislative act must be held within eleven months of the decision to submit the matter to the voters, as follows:

- A. Except as provided in SDMC section 27.1133(b), if a *special election* is called, it shall be held within eleven months of the adoption of the resolution of intention to submit the matter to the voters.

- B. If any other *City-wide Primary* or *City-wide General* or *special election* for any purpose at which all the *voters* are entitled to vote is scheduled to be held within eleven months from the date of the adoption of the resolution set forth in 27.1132(a), then the *City Council* may at its discretion submit the legislative act to the *voters* at that *election*.

Accordingly, the matter can be placed on the ballot for a City-wide municipal or special election only if the vote is scheduled to be held within eleven months of the adoption of the resolution of intent.

San Diego, as a Charter City, can set its own election procedures. Thus, the City's eleven-month requirement differs from the related procedure set for general law cities under California election law. With respect to the timing of an election on a referendum matter for a general law city, the legislative body may submit the matter to the voters at the next regular municipal election. California Elections Code section 9241 provides, in relevant part:

If the legislative body does not entirely repeal the ordinance against which the petition is filed, the legislative body shall submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body.¹

Cal. Elec. Code § 9241.

The City's eleven-month requirement for the election on a referendum matter also differs from what is required by the San Diego Municipal Code for calling a special election on an initiated legislative act. SDMC section 27.1037 provides that the City may call a special election or place the matter on the ballot at the next City-wide election.

We have reviewed the legislative history related to the amendment establishing the eleven-month time period in SDMC section 27.1133 and have not found any legal requirement to preclude scheduling a referended legislative act to be on the ballot of the next City-wide election. Thus, if the Council wishes to amend the code, it may amend SDMC section 27.1133 to state:

A special election for a referended legislative act may be consolidated with the next City-wide Primary or City-wide General Election at which the matter can be placed on the ballot; or a separate special election may be called for the purpose of voting on the matter.

¹ The 88-day requirement provides the necessary time for election officials to prepare for the election.

This amendment would be consistent with the City's time period for bringing an initiative matter to the voters and with provisions in California election laws. The timing of the election also would be subject to the 88-day requirement and other requirements for placing a matter before the voters.

CONCLUSION

The San Diego Municipal Code may be amended to provide that a referended legislative act may be placed on the ballot either at the next City-wide election or at a special election. If the Council wishes to amend the code, our office will draft the necessary ordinance.

Respectfully submitted,

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