

October 24, 1990

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

DRAFT ORDINANCE AMENDING SAN DIEGO MUNICIPAL CODE PERTAINING TO
ELIMINATE SUPPLEMENTAL PETITIONS IN LOCAL RECALL ELECTIONS

At its meeting on October 17, 1990, the Rules Committee directed the City Attorney to draft an ordinance eliminating supplemental petitions in local recall elections and present the draft to the full Council at its meeting on October 30, 1990. The draft ordinance is attached to this report.

This ordinance amends or repeals several sections of Chapter II, Article 7, Division 27 of the San Diego Municipal Code pertaining to supplemental petitions to recall elections. Essentially, the provisions now parallel those governing the initiative procedures. See Chapter II, Article 7, Division 25.

Please note that in eliminating the supplemental petitions the time for circulating recall petitions in The City of San Diego will be reduced to thirty-nine (39) days. Currently, a maximum of ninety-nine (99) days would be permitted. That number of days is calculated as follows: petitioners are allowed thirty-nine (39) days to circulate the first petition before the first filing date. San Diego Municipal Code sections 27.2708 and 27.2715. The Clerk has thirty (30) days in which to verify signatures on the original petition, during which time proponents of recall could be circulating supplemental petitions. San Diego Municipal Code section 27.2716. Lastly, if the Clerk issues a notice of insufficiency, recall proponents have another thirty (30) days in which to circulate petitions for filing with the Clerk. San Diego Municipal Code section 27.2719.

We note that the thirty-nine (39) day circulation is substantially less than that which is allowed for cities of comparable size under state law. State law allows one hundred sixty (160) days for circulating recall petitions for jurisdictions the size of San Diego. California Elections Code section 27210(e). We also note that the City of Los Angeles allows a period of one hundred twenty (120) days for circulating and filing recall petitions (Los Angeles City Charter sections

290.1 and 292.1; Los Angeles City Elections Code sections 335.1, 335.2 and 337, per guidelines issued by the Los Angeles City Clerk).

Courts have acknowledged the desirability of presenting

recall questions to the people without excessive delay. *Moore v. City Council of the City of Maywood*, 224 Cal. App. 2d 892, 901 (1966); *Wilcox v. Enstad*, 122 Cal. App. 3d 641, 651 (1981). However, a city council may not enact an ordinance which curtails or unreasonably burdens recall, and may not practically nullify or hinder the purposes of the charter provisions on recall. *Gray v. Kenny*, 67 Cal. App. 2d 281, 283 (1944); *Lail v. People ex rel Osgood*, 226 P. 300, 301 (1924).

Because recall is a right reserved to the people by the state constitution, it is afforded federal constitutional protection, and limits on the exercise of recall rights are subject to constitutional challenge. Because of its impact on the right to vote, recall is protected as a fundamental right under the Equal Protection Clause of the United States Constitution. See, for example, *De Bottari v. Melendez*, 44 Cal. App. 3d 910, 916 (1975). In addition, the right to petition for recall of an official is expression, the exercise of which is protected by the first and fourteenth amendments to the United States Constitution. *Pena v. Nelson*, 400 F. Supp. 493, 495 (D. Ariz. 1975).

We are bringing these authorities to your attention to alert you to the possibility that constitutional issues may be raised if the Municipal Code is amended to shorten substantially the time period for circulating recall petitions.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:jrl:920(043.1)
Attachments
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