

January 31, 1997

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

SPECIAL MEETING OF THE CITY COUNCIL ON FEBRUARY 3, 1997,  
AND NEED FOR ORDINANCE REPEALING ORDINANCE NO. O-18365

### **BACKGROUND**

On January 28, 1997, the City Clerk presented to the City Council a certified petition to repeal Ordinance No. O-18365 or set the matter for a referendary election. That same date, the Council adopted Resolution No. R-288314, which accepted the referendary petition and declared the intent of the Council to repeal Ordinance No. O-18365.

It is the opinion of the City Attorney's Office that the adoption of Resolution No. R-288314 satisfies the conditions of San Diego Municipal Code sections 27.2615 and 27.2616 concerning the action the City Council must take within ten (10) days of having a certified referendary petition presented by the City Clerk. However, in court and to the media, Michael Aguirre, attorney for the plaintiffs in the case Henderson, et al. v. City of San Diego, et al, San Diego Superior Court case no. 706794, has contended that only the actual repeal of Ordinance No. O-18365 satisfies those conditions.

Based upon these contentions, and in order to avoid further needless and meritless litigation on a tangential issue to the merits of the lawsuit, the City Attorney has recommended that the Council hold a special meeting to adopt an ordinance repealing Ordinance No. O-18365, in conformance with Resolution No. R-288314. We emphasize that this action is necessary only because of the spurious contentions of the plaintiffs in this case.

### **ANALYSIS**

Municipal Code section 27.2615 provides: "If the [certified] petition is presented to the Council by the Clerk, the Council must within ten days reconsider the legislative act in question."

Municipal Code section 27.2616 provides, in relevant part:

If the Council refuses to grant the petition to repeal the legislative act in question or fails to reconsider the act within ten days after presentation by the Clerk, the Council shall forthwith adopt a resolution of intention to submit the matter to the people at a special election.

It is important to note that neither of these sections require that the act in question (Ordinance No. O-18365) actually be repealed within the ten day period, only that the Council reconsider the act or accept the petition to repeal the act. Resolution No. R-288314, by its plain terms, states that the Council has reconsidered the act and accepts the petition to repeal the ordinance in question. Thus it is our opinion that the requirements of the Municipal Code have been met.

Notwithstanding this analysis, the plaintiffs have taken the frivolous position that Ordinance No. O-18365 must actually be repealed to satisfy the Municipal Code conditions. In light of this contention, and to avoid further needless waste of resources fighting a tangential issue, the City Attorney has recommended that a special meeting of the Council be called so that the actual repeal of Ordinance No. O-18365 may be accomplished within the ten (10) day period following January 28, 1997.

The ordinance repealing Ordinance No. O-18365 may be adopted at a single hearing pursuant to San Diego Charter sections 16 and 17 which provide that ordinances "relating to elections" may be passed on the day of their introduction.<sup>1</sup> It is our opinion that the subject ordinance relates to an election because it is the option in lieu of calling a referendary election, pursuant to the Municipal Code.

## CONCLUSION

It is regrettable that the Council must take the time to hold a special meeting on this matter. However, in light of the merit less contentions made by plaintiffs regarding the referendary process, it is the advice of the City Attorney that such a meeting occur to actually repeal Ordinance No. O-18365.

Respectfully submitted,

CASEY GWINN  
City Attorney

CWG:LJG:ljj:js(043.1)

cc City Manager

City Auditor

City Clerk

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