

ORDINANCE NUMBER O- 19407 (NEW SERIES)

ADOPTED ON SEP 06 2005

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 3 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.0301, 27.0305, 27.0308, 27.0315, AND 27.0323, AND AMENDING CHAPTER 2, ARTICLE 7, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.0636, ALL RELATING TO THE CITY OF SAN DIEGO ELECTIONS CODE

WHEREAS, section 10 of the San Diego City Charter provides that all elective officers of the City shall be nominated at the municipal primary election, and that the two candidates at a primary election who receive the highest number of votes for a particular elective office at said primary shall be the candidates, and only candidates, for such office and the names of only those two candidates shall be printed upon the ballots to be used at the general municipal election; and

WHEREAS, notwithstanding the language in Charter section 10, in response to the ruling in *Canaan v. Abdelnour*, 40 Cal. 3d 703 (1985), the City of San Diego amended its Municipal Code to allow for write-in candidacies in general municipal elections; and

WHEREAS, the *Canaan* case was overruled by *Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164 (2002), which held that cities could lawfully prohibit write-in candidates in run-off elections; and

WHEREAS, the provisions of Charter section 10, which may be construed to prohibit run-off candidacies in general municipal elections, and the provision of the San Diego Municipal Code, which explicitly allow run-off candidacies in general municipal elections, appear to be in conflict; and

WHEREAS, amending the San Diego Municipal Code to prohibit write-in candidacies in general municipal elections will harmonize the Municipal Code with the provisions of Charter section 10; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 27.0301, 27.0305, 27.0308, 27.0315, and 27.0323, to read as follows:

§27.0301 General Provisions for Write-in Candidates

Write-in candidates are permitted only 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.*

§27.0305 Time to Obtain Nomination Papers for Write-in Candidates

Nomination papers in connection with a write-in candidacy in a *District Primary Election, a City-wide Primary Election, a primary special election, or a recall election* may be obtained from the *City Clerk* no earlier than the first business day after the close of regular nominations for that *election.*

§27.0308 Contents of Nominating Petition for Write-in Candidates

- (a) Nominating *petition* pages for write-in candidates shall be furnished by the Office of the *City Clerk.*
- (b) Nominating *petition* pages for write-in *candidates* shall be printed on white paper, 8 ½ by 11 inches in size.

- (c) Each nominating *petition* page for a write-in *candidate* shall contain items 1 through 3 in the order specified:
 - (1) A statement that includes the name of the write-in *candidate*, the office for which he or she seeks nomination, and the date of the pertinent *election*.
 - (2) Space for signing *voters'* information prepared in accordance with Sections 27.0309 and 27.0310.
 - (3) A circulator's affidavit of authenticity prepared and signed in accordance with Sections 27.0309 and 27.0313.
- (d) The nominating *petition* for a write-in candidate may consist of any number of *petition* pages.

§27.0315 Time for Submitting Nomination Papers of Write-in Candidates to Clerk

- (a) Except for the Statement and Affidavit of Write-in Nominee filed pursuant to section 27.0306, nomination papers for write-in candidacy in a *District Primary Election, City-wide Primary Election, primary special election, or recall election*, shall be submitted for filing in the Office of the City Clerk not later than fourteen calendar days prior to the date of the *election*.
- (b) Except for the Statement and Affidavit of Write-in Nominee filed pursuant to section 27.0306, all nomination papers shall be submitted for filing at the same time; no supplemental filings are allowed.

§27.0323 Inclusion of Write-In Candidate's Name on Ballot and in Sample Ballot for District or City-Wide General Election

If a write-in *candidate* in a *District Primary Election, City-wide Primary Election, or primary special election* is chosen by the electors as one of the two *candidates* to have their name appear on the ballot for a *District General Election, City-wide*

General Election, or run-off *special election*, the procedures contained in Division 6 regarding designation of the candidate's title, inclusion of the *candidate's* name on the ballot and sample ballot, and the statement of the *candidate's* qualifications and photograph will be followed. The City *Clerk* shall set a reasonable time for the write-in *candidate* to submit those documents for filing.

Section 2. That Chapter 2, Article 7, Division 6 of the San Diego Municipal Code is hereby amended by amending section 27.0636 to read as follows:


§27.0636 Counting of Write-In Votes

Write-in *candidates* are permitted only 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 therefor, unless prohibited by the provisions of section 27.0637 of this article.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Catherine M. Bradley
Deputy City Attorney

CMB:jab
07/21/2005
Or.Dept:Rules
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