

ORDINANCE NUMBER O- 20294 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 12 2013

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7,
DIVISION 27 OF THE SAN DIEGO MUNICIPAL CODE TO
REPEAL SECTION 27.2726, RELATING TO RECALL
ELECTIONS.

WHEREAS, article XI, section 5(a) of the California Constitution provides that a charter city may “make and enforce all ordinances and regulations in respect to municipal affairs,” and that “[c]ity charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith”; and

WHEREAS, article XI, section 5(b) grants plenary authority to charter cities to provide laws in their charters for the “conduct of city elections,” and the manner in which “municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal”; and

WHEREAS, the San Diego Charter thus governs City elections and Charter section 8 requires the City Council to adopt an election code ordinance, “providing an adequate and complete procedure to govern municipal elections”; and

WHEREAS, Charter section 23 sets forth the percentage of registered voters who must sign a petition to place a recall on the ballot, and requires the Council to include in the election code ordinance an “expeditious and complete procedure for the exercise by the people of the . . . recall, including forms of petitions”; and

WHEREAS, the Council adopted an election code ordinance in the San Diego Municipal Code that includes a chapter detailing the City's recall procedures at Chapter 2, Article 7, sections 27.2701 through 27.2732; and

WHEREAS, Municipal Code section 27.2722 requires that a recall ballot consist of two parts: the question of whether an elected official should be recalled, then a vote for his or her successor; and

WHEREAS, Municipal Code section 27.2726, Validity of Votes Cast, states that "No vote cast for a candidate shall be counted unless the voter also voted on the recall question"; and

WHEREAS, in the 2003 decision of *Partnoy v. Shelley*, 277 F. Supp. 2d 1064 (S.D. Cal. 2003), a U.S. District Court for the Southern District of California held unconstitutional a similar provision in the California Elections Code, holding that all votes for a successor must be counted even if a voter did not cast a vote on the underlying recall question; and

WHEREAS, the requirement that a voter must vote on both parts of a recall ballot to have his or her vote counted was held by the court to effect "a severe restriction on one's Constitutional right to vote" and to violate voters' First Amendment rights of free expression; and

WHEREAS, the Council has authority to amend its ordinances regarding recall to ensure its recall rules are constitutional, and thus seeks to repeal section 26.2726; and

WHEREAS, repealing a law that has been declared unconstitutional at the state level will clarify the City's recall laws and prevent against an unnecessary constitutional challenge; and

WHEREAS, under Charter sections 275(c) and 295(d), this ordinance relating to elections may be passed by the Council on the date of its introduction; NOW, THEREFORE,

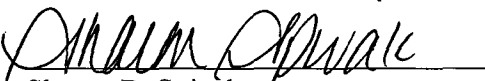
BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 27 of the San Diego Municipal Code is hereby amended by repealing section 27.2726.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. Pursuant to Charter sections 275(c) and 295(d), this ordinance relating to elections may be passed by the Council on the date of its introduction, and shall take effect and be in force on the date of its final passage.

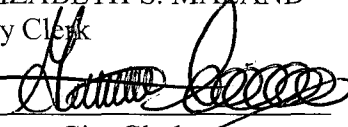
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Sharon B. Spivak
Deputy City Attorney

SBS:jdf
08/07/13
Or.Dept: Council
Doc. No.:558572

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 8/28/13.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: _____
(date)

BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

Note: This ordinance was returned unsigned by the Mayor's Office to the Office of the City Clerk on August 30, 2013. Pursuant to San Diego Charter Section 295(a)(2), this ordinance is deemed approved on September 12, 2013.

Passed by the Council of The City of San Diego on AUG 28 2013, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 12 2013

AUTHENTICATED BY:

BOB FILNER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its final passage, to wit, on SEP 12 2013, said ordinance being of the kind and character authorized for passage by Section 16 of the Charter.

~~I FURTHER CERTIFY that the final reading of said ordinance was read in full.~~

I FURTHER CERIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number 20294