

MEMORANDUM OF LAW

DATE: December 7, 1990

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Scheduling of Placing Ordinance Calling Special
Election for Recall on City Council Docket

This is in response to your memorandum of December 6, 1990, in which you ask whether the City Clerk is required to schedule a matter calling for a special recall election on the City Council docket of December 10th and 11th, 1990, as a supplemental item rather than the next available regular docket of January 7, 1991.

The matter may wait until the next available regular docket date. Under San Diego Municipal Code section 27.2717, once the City Clerk finds that a recall petition contains the requisite number of signatures, he is required to certify those results and to send a "notice of sufficiency" to a representative of the proponents.

Additionally, this Municipal Code section requires the City Clerk "without delay" to present the petition to the City Council with his certification attached. The issue presented arises because of the phrase "without delay."

We interpret this phrase to require the City Clerk to present the petition with his certification to the City Council in the normal course of business. In other words, the City Clerk is not permitted undue delay in presenting the petition to the City Council. For example, the City Clerk could not under this section wait until next March to present the petition to the Council since the results were verified on December 6, 1990. Neither does the language require the City Clerk to drop everything to expedite the presentation of the petition to Council. In particular, we note that the results of verification of signatures was not known until December 6th. We further note that we received your memo this morning, December 7th, about 8:30 a.m. We also note, in accordance with administrative rules established long ago by the Clerk's office, that normal

"supplemental docket closing" for the December 10th and 11th docket was December 5th at 2:00 p.m. We opine that you need not ignore the normal "supplemental docket closing" date to place the petition before the Council on December 10th or 11th.

Section 27.2717 must also be read in light of section 27.2722, which requires the Council to "immediately" call a special election. To call a special election requires adoption

of ordinance(s) and resolutions. These are very technical documents that must be prepared in advance of council action. To meet posting requirements of the Brown Act and Council rules, the documents proposed for adoption by Council must be prepared by the City Attorney and placed on file with the City Clerk's office in advance of the proposal council action, that is, by 2:00 p.m. today. It is physically not possible for this office to prepare those documents in the time available.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011:(x043.2)

ML-90-102