Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: July 8, 2010

TO: Elizabeth Maland, City Clerk

FROM: City Attorney

SUBJECT: Signature Verifications of Charter Amendment Initiatives

The San Diego County Registrar of Voters (ROV) recently determined that a local initiative petition to amend the City Charter lacked sufficient signatures for placement on the November 2010 ballot. The ROV used the random sample procedure described in California Elections Code section 9115 for verification of signatures, finding the statistical sampling of signatures to be insufficient. You have asked if San Diego Municipal Code (SDMC) section 27.1025 applies to this determination of insufficiency. That section permits a voter to pay for a verification of all signatures for local legislative initiative petitions which have been found insufficient using a statistical sampling process.

We advised you informally that SDMC section 27.1025 does not apply to initiatives seeking to amend the San Diego Charter. Amending a City Charter by voter petition is controlled by the California Constitution and general state laws. The controlling state law in this situation, California Elections Code section 9115, requires that no action be taken on a petition to amend a city charter, once a petition is determined to be insufficient. This memorandum provides you with the basis for that advice.

<div align="center">DISCUSSION</div>

I.   STATE LAW GOVERNS THE PROCESS FOR CHARTER AMENDMENT INITIATIVES.

The City derives its ability to govern its municipal affairs by charter from the California Constitution. Cal. Const. art XI, § 5. The California Constitution provides a distinction between the initiative and referendum powers reserved to chartered cities to enact and repeal ordinances, and the initiative power exclusively applicable to charter amendments. *District Election v. O'Connor,* 78 Cal. App. 3d 261, 271-272 (1978). The exercise of the initiative and referendum in

the former situation encompasses local regulatory matters, such as ordinances, and are properly regulated as municipal affairs. *Id.* at 272.

However, the use of the initiative power to amend a city charter is a matter of statewide concern, governed by the California Constitution and controlling state laws. *Id.* at 272-274 (cited with approval in *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*, 36 Cal. 3d 591, 598-599 (1984)); Cal. Const. art. XI, § 3(b); Cal. Elec. Code §§ 9225-9269; Cal. Gov't Code §§ 34450-34462. The state exercises the same "paramount control" over charter amendment procedures through its statutory enactments as was formerly provided under the Constitution, "preempting that field of regulation to the exclusion of any attempted municipal regulation in the same field." *District Election,* 78 Cal. App. 3d at 274.[1]

The City defers to these controlling state laws regulating charter amendments in San Diego Charter section 223. Section 223 acknowledges the state's paramount control over the amendment process. It states: "This Charter may be amended in accordance with the provisions of Section Eight, Article Eleven, of the Constitution of the State of California, or any amendment thereof or provision substituted therefor in the State Constitution." Article XI, section 3 of the California Constitution and its concomitantly-created general statutes are the successors to Article XI section 8. *District Election,* 78 Cal. App. 3d at 270.

II. CALIFORNIA ELECTIONS CODE SECTION 9115 PROVIDES THE RANDOM SAMPLE SIGNATURE VERIFICATION PROCESS APPLICABLE TO CHARTER AMENDMENT PETITIONS.

Article XI, section 3(b) of the California Constitution permits the governing body of a city, a charter commission, or initiative of the voters to propose a charter amendment.[2] California Government Code section 34450 permits cities to amend their charters according to that article of the Government Code "or Article 3 (commencing with Section 9255) of . . . the Elections Code." The Government Code encompasses amendments by charter commissions and the governing body. Cal Gov't Code §§ 34450-34462. The Elections Code encompasses amendments by charter commissions, the governing body, *and* voter initiative amendments. Cal. Elec. Code § 9255.[3]

---

[1] The rule that state laws govern the process to amend city charters is well settled. *Howard Jarvis Taxpayers Assn. v. City of San Diego*, 120 Cal. App. 4th 374, 387-389 (2004); *Clark v. Patterson,* 68 Cal. App. 3d 329, 335-336 & n. 6 (1977); *see also Hernandez v. County of Los Angeles,* 167 Cal. App. 4th 12, 21 (2008); *Jeffrey v. Superior Court,* 102 Cal. App. 4th 4, 6 (2002); 1989 City Att'y MOL 30 (89-3; Jan. 4, 1989); City Att'y MOL No. 2006-8 (March 22, 2006) at 2-3.

[2] Article XI, section 3(b) of the California Constitution provides: "The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body."

[3] Section 9255 provides: "(a) The following city or city and county charter proposals shall be submitted to the voters at either a special election called for that purpose, at any established municipal election date, or at any established election date pursuant to Section 1000, provided that there are at least 88 days before the election: ¶ (1) A charter proposed by a charter commission, whether elected or appointed by a governing body. A charter commission may also submit a charter pursuant to Section 34455 of the Government Code.¶ (2) An amendment or repeal of a charter

California Elections Code section 9266[4] *requires* "the elections official [to] examine the [charter amendment] petition in the same manner as are county petitions in accordance with Sections 9114 and 9115." Sections 9114 and 9115 provide alternative methods for verifying petition signatures. *See Wilcox v. Enstad,* 122 Cal. App. 3d 641, 652, 653 (1981)(interpreting similar Elections Code recall provisions). Section 9114 requires all petition signatures to be verified, "[e]xcept as provided in Section 9115." When the petition bears more than 500 signatures, section 9115 permits the elections official to use a random sampling technique for verification of signatures.[5] The random sampling technique to be used is set forth in the California Code of Regulations. Cal. Code Regs. title 2, §§ 20510-20540.

If the statistical sampling process shows the petition is insufficient, section 9115 requires that "no action shall be taken on the petition." § 9115(e).[6] If the sampling shows the number of valid signatures to be within 95 to 110 percent of the number of signatures of qualified voters needed to declare the petition sufficient, however, the elections official is required to verify each signature. There is no other provision in section 9115 requiring elections officials to verify each signature.

---

proposed by the governing body of a city or a city and county on its own motion. ¶ (3) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city.¶ (4) An amendment or repeal of a city and county charter proposed by a petition signed by 10 percent of the registered voters of the city and county. ¶ (5) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter. ¶ (b) Charter proposals by the governing body and charter proposals by petition of the voters may be submitted at the same election. ¶ (c) The total number of registered voters of the city or city and county shall be determined according to the county elections official's last official report of registration to the Secretary of State that was effective at the time the notice required pursuant to Section 9256 was given."

[4] Future section references in this portion of the memorandum are to the California Elections Code unless indicated otherwise.

[5] Section 9115 provides: "(a) Within 30 days from the date of filing of the petition, excluding Saturdays, Sundays, and holidays, if, from the examination of petitions pursuant to Section 9114 shows that more than 500 signatures have been signed on the petition, the elections official may use a random sampling technique for verification of signatures. The random sample of signatures to be verified shall be drawn so that every signature filed with the elections official shall be given an equal opportunity to be included in the sample. The random sampling shall include an examination of at least 500, or 3 percent of the signatures, whichever is greater.¶(b) If the statistical sampling shows that the number of valid signatures is within 95 to 110 percent of the number of signatures of qualified voters needed to declare the petition sufficient, the elections official shall, within 60 days from the date of the filing of the petition, excluding Saturdays, Sundays, and holidays, examine and verify each signature filed. ¶ (c) In determining from the records of registration, what number of valid signatures are signed on the petition, the elections official may use the duplicate file of affidavits maintained, or may check the signatures against facsimiles of voters' signatures, provided that the method of preparing and displaying the facsimiles complies with law. ¶ (d) The elections official shall attach to the petition, a certificate showing the result of this examination, and shall notify the proponents of either the sufficiency or insufficiency of the petition.¶ (e) If the petition is found insufficient, no action shall be taken on the petition. However, the failure to secure sufficient signatures shall not preclude the filing later of an entirely new petition to the same effect. ¶ (f) If the petition is found to be sufficient, the elections official shall certify the results of the examination to the board of supervisors at the next regular meeting of the board."

[6] Section 9114 also provides: "If the petition is found insufficient, no further action shall be taken."

CONCLUSION

The process of verifying petitions for charter amendments is governed by the California Constitution and controlling state laws. California Elections Code section 9115 is the state law that sets forth the procedure with regard to city charter amendments. It permits an elections official to use a random statistical sampling procedure to determine whether there are sufficient valid signatures to qualify a matter for the ballot. If the elections official uses a random sample and the petition signatures are found insufficient, the section requires that "no action shall be taken on the petition."

JAN I. GOLDSMITH, City Attorney

By
         Josephine A. Kiernan
         Deputy City Attorney

JAK: sc
MS-2010-8