



Office of the City Manager

ACTION CALENDAR
February 11, 2014

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Proposed Charter Amendment – Article IV – Recall of Elective Officers

RECOMMENDATION

Review the information provided by staff regarding Charter Recall provisions and direct the City Manager to return with draft ballot measure language for the November 4, 2014 general election.

FISCAL IMPACTS OF RECOMMENDATION

Some monetary cost associated with placing a measure on the ballot, offset by potentially avoiding a costly special election in the future.

CURRENT SITUATION AND ITS EFFECTS

Many of the provisions in the Charter related to elections, and especially the Recall process, pre-date the switch to consolidated elections in November of even-numbered years.

Should a successful Recall effort be mounted, the outdated provisions in Article 7 related to the calling of the election would likely preclude the City from consolidating the recall election with a regularly scheduled election and may result in the Registrar of Voters declining to provide election services to the City. Either of these outcomes would cost the City upwards of \$300,000 in elections costs.

In addition, other provisions are proposed to be revised to reflect recent judicial rulings, to clarify the process for petitioners, and to incorporate some provisions of the state Elections Code related to Recalls.

BACKGROUND

The provisions in the Charter related to Recalls were significantly amended in 1965 and 1975 with a minor revision in 1986 to account for recall by Council district. Almost all of these provisions in Article IV reflect the election practices and deadlines from the time when the general election was in April of odd-numbered years and before the change to consolidated general elections in November of even-numbered years.

The City Charter may only be amended by a vote of the people.

RATIONALE FOR RECOMMENDATION

The outdated Charter provisions in Article IV may cause confusion for citizens and administrators and could potentially lead to very high election costs for stand-alone elections that the city may be forced conduct on its own.

ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the Charter at this time.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1: Current Recall Charter Provisions with Proposed Changes

ARTICLE IV RECALL OF ELECTIVE OFFICERS

Section 7. Recall.

(1) Persons subject to recall.

Every incumbent of an elective office, whether elected by popular vote or appointed to fill a vacancy, is subject to recall by the voters of the City. The procedure for recall shall be as provided in this Section 7.

(2) Commencement of recall proceedings.

Recall proceedings may be commenced by the service, filing and publication of a notice of intention to circulate a recall petition pursuant to subdivision (6) of this Section 7. Proceedings may not be commenced against the holder of an office unless, at the time of commencement, the holder has held office for at least six months and no recall petition has been filed against such holder within the preceding six months-. Recall proceedings may not be commenced if the officer holder's term of office ends in six months or less.

Comment [mn1]: This is in the state Elections Code. It is likely that the official's term would already be over before the recall could be on the ballot.

(3) Recall petition.

A petition demanding the recall of the officer sought to be recalled shall be filed with the City Clerk. The petition shall be signed by not less than 25 percent of the registered electors of the City eligible to vote for said officer ~~on the day the petition is filed with the City Clerk.~~ according to as indicated by the most recent Report of Registration by the county elections official to the Secretary of State.

Comment [MN2]: It is very difficult to determine the exact registration number on a daily basis. The number fluctuates daily and during the day as registrations are processed.

(4) ~~Repealed. Occurrence of vacancy after filing petition.~~

~~If a vacancy occurs in an office after a recall petition has been filed, the election shall nevertheless proceed as provided in this Section 7, except as provided in subdivision (20) hereof.~~

Comment [mn3]: These provisions have been clarified and moved to paragraph 20 below.

(5) Recall of more than one officer.

One election is sufficient for the recall of one or more officers, but a separate petition is necessary to propose the recall of each officer.

(6) Notice of intention to circulate petition; statement.

~~No signature may be affixed to the petition until~~ The proponents shall have served, filed and published a notice of intention to circulate a recall petition. Said notice shall contain the name of the officer sought to be recalled and the title of his or her office, a statement in not more than 500 words of the grounds on which the recall is sought, and the name and address of at least one proponent. The notice of intention shall be served, personally or by certified mail, on the officer sought to be recalled, and a copy thereof with a certificate of the time and manner of service shall be filed with the City Clerk.

Comment [mn4]: Commencement of signature gathering is covered in paragraph 9 below.

(7) Answer to statement of proponents.

Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the City Clerk an answer in not more than 500 words to the statement of the proponents, and, if an answer is filed, shall serve a copy thereof, personally or by certified mail, on one of the proponents named in the notice of intention. The statement and answer are intended solely for the information of the voters and no insufficiency in the form or substance thereof shall affect the validity of the election or proceedings.

(8) Publication of notice, statement and answer.

The notice, statement and answer, if any, shall be published by the proponents at least once in a newspaper of general circulation published in the City, or, if there be no such newspaper, then in a newspaper published in the County and of

general circulation within the City. The provision of Section 68 of this Charter indicating that posting shall be sufficient publication of any matter required by the Charter to be published shall not be applicable to the publication requirement of this Subdivision (8) of Section 7.

(9) Circulation of petition.

Seven days after the filing an affidavit of publication of the notice, statement and answer, if any, with the City Clerk, statement and answer, if any, the recall petition may be circulated and signed. The petition shall bear a copy of the notice of intention, statement and answer, if any. If the officer has not answered, the petition shall so state. Signatures shall be secured and the petition filed within 75 90 days from the filing of the notice of intention affidavit of publication.

Comment [mn5]: This ensures that the affidavit is filed with the Clerk and that the Clerk is immediately aware of when the circulation period begins

Comment [mn6]: The 15 day supplemental petition period and the 75 day regular circulating period are being combined into one 90 day circulating period in order to simplify the process.

Comment [MN7]: This resolves an internal inconsistency in the current language.

(10) Signatures.

The signatures appended to the petition need not all be appended to one paper but may be in sections. Each signer shall print his or her name, add ~~to~~ his or her signature, the date of his or her signing and list his or her residence, giving street and number. If no street or number exists, then a designation of the place of residence shall be given which will enable the location to be readily ascertained. The petition, when filed, must have designated therein the name or number of the respective precinct in which each of the signers resides.

Comment [MN8]: These changes provide consistency with other types of petitions in state law.

Comment [mn9]: This is an unreasonable burden.

(11) Affidavit of Circulator.

Each section of the petition shall have attached to it an affidavit made by the circulator of the petition ~~by a voter of the City~~. The affidavit shall be sworn to under penalty of perjury ~~before an officer competent to administer oaths~~ and shall conform to the requirements of the state Elections Code Sections 104 and 9022 or their successors ~~state that the affiant solicited signatures to that particular~~

Comment [mn10]: Amendments to the Elections Code and some Court cases have changed the circulator requirements. This change will ensure that the requirements remain current in the future.

~~section and saw written the signatures appearing thereon. The affidavit shall also state that according to the best information and belief of the affiant:~~

~~(a) Each signature is the genuine signature of the person whose name it purports to be.~~

~~(b) The signer is a qualified voter of the City.~~

Any section of a petition may include a number of attached sheets.

(12) Clerk's examination of petition; ~~supplemental petition.~~

In order to be acceptable for filing, the petition must on its face purport to have appended to it signatures of voters in the required number. Within ~~30~~ **15** ~~business~~ days from the date ~~of filing~~ the petition ~~is filed~~, the Clerk shall examine and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. He or she shall attach to the petition his or her certificate showing the result of his or her examination. ~~If the Clerk's certificate shows the petition is insufficient, a supplemental petition, in form a duplicate of the original petition, may be filed within 15 days of the date of the certificate of insufficiency.~~

Comment [mn11]: Changed to standard 30 business days for signature checking in Elections Code. 15 calendar days could be as few as 11 business days – likely not enough time to verify approximately 19,000 signatures (or more).

Comment [mn12]: As stated above, the 75 day period and the 15 day period are proposed to be combined.

(13) Insufficient petition.

~~The Clerk shall, within 15 days after the supplemental petition is filed, examine it, and if his or her the certificate of the City Clerk shows that the petition is still insufficient, no action shall be taken thereon. The petition shall remain on file as a public record pursuant to Elections Code Section 11226 as it may be amended from time to time, and the failure to secure sufficient names shall not prejudice the filing later of an entirely new petition to the same effect.~~

Comment [MN13]: State Code requires that the petition be kept on file. The California Public Records Act exempts recall petitions from disclosure to the general public.

(14) Submission to Council; order for election.

If the petition, ~~together with supplementary petitions, if any,~~ is sufficient, the Clerk shall submit certification of petition's sufficiency ~~it~~ to the Council without delay.

The Council shall at once order a special election to be held, not less than 100 ~~60~~ nor more than 180 ~~75~~ days after the date of the order, to determine whether the voters will recall the officer sought to be recalled. If a regular municipal election, a previously called special municipal election, or any statewide election is to be held within this time period ~~occur not more than 90 nor less than 60 days from the date of the order~~, the Council may order the special-recall election to be held on the day of ~~the regular that~~ election.

Comment [mn14]: Old deadlines are not feasible. This change will allow for a reasonable nomination period and increase the likelihood that the recall election could be consolidated with other regular and special elections.

Comment [MN15]: Provides more options for consolidation with a previously scheduled election

(15) Nominations.

(a) The provisions of Section 6 1/2 of Article III of the Charter shall be applicable in recall proceedings and elections.

(b), ~~and t~~he officer sought to be recalled as well as the candidate or candidates nominated to succeed him or her may file the candidate's statement provided for in Section 6 1/2 of Article III of the Charter ~~herein~~. The candidate's statement of the officer sought to be recalled shall be filed not later than the last day upon which nomination papers may be filed.

(c) The City Council shall set the nomination period by resolution. Said filing period shall end no later than the 88th day prior to the election.

Comment [mn16]: This will help ensure that the City can request election services from the Registrar of Voters.

(15.5) Sample ballot.

The Clerk shall cause to have mailed to each voter, at least 10 days prior to the election, a sample ballot and a separate printed copy of the statement of the proponents and of the answer, if any, of the officer sought to be recalled. If the recall of more than one officer is sought, the statement and answer for each shall

be printed together and shall be clearly distinguished from those of any other officer.

(16) Form of recall question.

There shall be printed on the recall ballot, as to each officer whose recall is to be voted on, the following question: "Shall (name of person) be recalled from the office of (title of the office)?" Following which question shall be the words "yes" and "no" on separate lines, with a voting square at the right of each, in which the voter shall indicate in the manner prescribed his or her vote for or against the recall.

(17) Ballot; nominees; counting votes.

On the recall ballots, under each question, there shall be printed the names of those persons who have been nominated, in the manner provided by this Charter for nominations at municipal elections, as candidates to succeed the incumbent if he or she is recalled from office by the recall election. ~~No vote cast shall be counted for any candidate for the office unless the voter also voted on the question of the recall of the person sought to be recalled from that office.~~ The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. Voting procedure shall be in accordance with Article III, Section 5, Paragraph 12 and Article V, Section 9 of the City Charter.

Comment [mn17]: Removed pursuant to new case law from 2003 Gubernatorial recall

(18) Canvass of votes.

The City Council shall meet at its usual place of meeting on the first Tuesday after the ~~completion of the canvass of votes cast~~ ~~election to canvass the returns~~ and to declare the results as in a regular election. If a majority of those voting at the election voted in favor of the recall of any incumbent from office, the incumbent shall be deemed removed from office upon the qualification of his successor.

Comment [mn18]: Canvass is not completed in 7 days. In a consolidated election the Registrar is permitted 28 days to complete the canvass.

If all of the members of the City Council or Board of Education are recalled, and no candidates are elected to succeed them, the recall shall fail and the incumbents shall remain in office.

If all or part of the members of the City Council or Board of Education are recalled, and not enough candidates are elected to provide a quorum, the appointment of persons to bring the membership up to a quorum shall be by the remaining members of the City Council or Board of Education, as the case may be, ~~after which t~~he quorum shall fill the remaining vacancies by appointments.

If there are any unfilled vacancies remaining ~~30~~ **60** days after the ~~recall~~ election completion of the canvass of votes cast, and more than ~~75~~ **180** days will elapse before the next general municipal election will be held, the City Council shall immediately cause an election to be held to fill the vacancies.

Comment [MN19]: This extension will allow for recruitment, evaluation and placement on the agenda of a regular city council meeting.

Comment [MN20]: Modern timeline needed.

A person appointed to office under this section shall hold office for the remainder of the unexpired term of the recalled officer whose position he or she is appointed to fill.

(19) Declaration of election of candidate; failure to qualify; filling vacancy.

If the vote recalls the officer, the candidate who has received the highest number of votes for the office shall be declared elected for the unexpired term of the former incumbent. If the person who received the highest number of votes fails to qualify within 10 days after the declaration of his or her election, the office shall become vacant and shall be filled according to law.

(20) Vacancy in office after recall petition is filed. Death or resignation of officer sought to be recalled.

~~If the officer sought to be recalled dies more than 40 days prior to the election, the period for filing nomination papers to succeed the officer shall be extended to the 25th day prior to the election.~~

Comment [mn21]: Unfeasible timeline in modern elections

(1) If a vacancy occurs in the office sought to be recalled and more than one candidate has been nominated for the office, then the election shall be held as a special election to fill the vacancy and the recall question shall not appear on the ballot.

Comment [mn22]: Paragraphs 1 and 2 cover the potential scenarios of when a vacancy might happen after the recall election has been called.

(2) If a vacancy occurs in the office sought to be recalled~~resigns prior to the election, and at the close of the period for filing nomination papers~~ only one person has been nominated for the office or no person has been nominated for the office, an election shall not be held. In such case the City Council or Board of Education, as the case may be, shall appoint to the office the person nominated, or, if no person has been nominated, shall appoint any qualified person.

(21) Disqualification from office.

A person who has been recalled, or who has resigned from office while recall proceedings were pending against him or her, shall not be a candidate for nor appointed to such office within one year after his or her resignation or recall.

(22) Further regulations.

The City Council may, by resolution, make such further regulations as may be necessary to carry out the provisions of this Section.

~~**(23) Withdrawal of candidate.**~~

~~Candidates nominated to succeed the incumbent if he or she is recalled from office by the recall election may withdraw from candidacy no later than the date the City Council may provide by resolution.~~

Comment [mn23]: There is no withdrawal after the nomination period is closed. The candidate name will appear on the ballot according to state law.