The Recall: A Guide to Processing Municipal Recall Elections

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I. INTRODUCTION

The ability to recall public officers is a reserved power of the voters under the California Constitution. Cal. Const. Art. II, section 13.

Although the recall power is reserved to voters in the California Constitution, the recall process is addressed in and governed by the California Elections Code. The Elections Code sets forth a detailed process governing the recall of local elected officials. The recall process begins with the recall proponents’ service, filing, and publication of a “Notice of Intent to Circulate a Recall Petition” (Elec. Code § 11006). Following the targeted official’s “answer” to the Notice of Intent (Elec. Code § 11023), and approval of the form of the petition by the city clerk (Elec. Code § 11042), the recall proponents may commence circulation of a recall petition (Elec. Code § 11042(d)). Circulation of the petition must be completed within a specific time period that varies based on the size of the county where the petition is being sought (Elec. Code § 11220).

After circulation of the petition, an elections official (usually the county clerk) must verify that a correct number of valid signatures is obtained, and examine and certify the signatures (Elec. Code § 11225). Upon completing the examination of the petition’s signatures, the city clerk must certify either the sufficiency or insufficiency of the petition (Elec. Code §§ 11224, 11225). If the city clerk issues a certificate of sufficiency, it must then submit it to the governing board (i.e. city council) at its next regular meeting (Elec. Code §§ 11224, 11225). The governing board then has 14 days to issue an order stating that a recall election will be held (Elec. Code § 11240). In the event that a city council does not order an election, then the County Registrar of Voters may do so (Elec. Code § 11241).

The recall election must be held not less than 88, nor more than 125 days after the issuance of the order calling for the election (Elec. Code § 11242). The recall election consists of two steps: (1) the voters decide whether or not to recall the targeted officer, and (2) the voters choose a successor if the recall vote is successful.

II. PROCEDURAL ASPECTS TO RECALLING LOCAL OFFICERS

A. Service, Filing and Publication of Notice

The first step in the commencement of a municipal recall election is the recall proponents’ service, filing and publication (or posting) of a “Notice of Intent to Circulate a Recall Petition” (“Notice of Intention”) (Elec. Code § 11006).

The contents of a proper Notice of Intention must contain:

1) The name and title of the officer to be recalled.

Note Elec. Code § 11007 which prohibits the circulation of recall petitions if (1) the official has not held office during the current term for more than 90 days; (2) the official’s term ends within six months or less; or (3) a recall election has been determined in his or her favor within the last six months.
2) A statement, not exceeding 200 words in length, of the reasons for the recall.

3) The printed name, signature and business or residence address of each of the proponents (all must be registered voters in the electoral jurisdiction). There must be at least 10 signers, or a number equal to the number of signatures required to be filed on the nomination paper of the officer sought to be recalled (whichever is greater) (Elec. Code § 11020).

Proper “service” of the Notice of Intention may be accomplished through: (1) the personal delivery or (2) certified mail delivery of the Notice of Intention on the officer that is sought to be recalled (Elec. Code § 11021). The original copy of the Notice of Intent must then be attached to an affidavit detailing the time and manner of service and must be filed with the city clerk within seven days (Elec. Code § 11021).

Publication of the Notice of Intention must be accomplished at the recall proponent’s expense through the publishing of notice in a newspaper of general circulation at least once (Elec. Code § 11022). The answer of the officer sought to be recalled (see below) constitutes part of the Notice of Intention (see Elec. Code §§ 11020(d), 11023) and must also be published by the recall proponents. If publication in a newspaper is not possible, the proponent must post notice in at least three public places within the jurisdiction of the officer sought to be recalled. Posting is only allowed if there is no newspaper of general circulation that is able to provide timely publication in the jurisdiction of the officer whose recall is being sought (Elec. Code § 11022).

A recall proponent must then file proof of publication or an affidavit of posting the Notice of Intention at the same time they file two blank copies of the recall petition (see “Proper Format of Recall Petition” below) with the city clerk. Proof of publication may be obtained from the newspaper publisher after the Notice of Intention appears in print (Elec. Code § 11042).

B. Answer of Officer Sought to be Recalled

After filing the Notice of Intention, the officer that is sought to be removed may file an answer with the elections official of not more than 200 words in length (Elec. Code § 11023(a)). The answer must contain the printed name, signature and business or residence address of the officer sought to be recalled (Elec. Code § 11023(c)). If the officer chooses to file an answer it must be done within seven days after the filing of the Notice of Intention and a copy must be served (by personal delivery or certified mail) on at least one of the proponents named in the Notice of Intention (Elec. Code § 11023). The answer must be published by the recall proponent and constitutes a part of the recall petition (Elec. Code §§11022, 11041).

C. Proper Format of Recall Petition

Recall petitions must be prepared using the specific format provided by the Secretary of State. This format is available from the county elections official or from the office of the Secretary of State (Elec. Code § 11041). The petition must be printed in uniform size and darkness with uniform spacing (Elec. Code § 11041). Recall petitions must include a number of very technical requirements. Some of these technical requirements include: (1) The minimum
font size of the petition is 8-point type. (2) Each side of each sheet of paper where signatures appear must include the answer, if any, of the officer sought to be recalled. If the officer has not filed an answer, the petition must state so. (3) The petition form must direct signers to include their “resident address” rather than, “address as registered” or the form will be rejected as invalid. *Assembly v. Deukmejian* (1982) 30 Cal.3d 638.

**D. Approval of Petition Form by City Clerk/Elections Official**

Once proponents create their recall petition, they must file two blank copies of the proposed petition with the city clerk within ten days after the officer sought to be removed files his or her answer to the Notice of Intention. If no answer is filed by the officer, the proponents must file their two blank copies within ten days after the expiration of the seven day period for filing the answer (Elec. Code § 11042).

The city clerk must then, within ten days of receiving the copies of the petition, determine whether the proposed form and wording of the petition meet the necessary requirements and notify the proponents in writing of the findings. If it is found that the petition does not meet the statutory requirements, the notification must include a statement of what alterations in the petitions are necessary. The proponents must then file two blank copies of the corrected petition with the elections official within ten days after receiving notification of the alterations to be made. This ten day correction notification period and ten day filing period for corrected petitions will be repeated until the elections official finds that no alterations are required. Until the elections official has approved the petition, no signatures may be obtained on the recall petition (Elec. Code § 11042).

**E. Limits On Use Of Recall**

The Elections Code limits the commencement of a recall in certain circumstances. “Commencement” is defined as the “service, filing and publication or posting of a notice of intention” (Elec. Code § 11006). Elections Code Section 11007 states that a recall may not be commenced (except where a person is appointed to office because no person has been nominated) in the following circumstances:

1) The officer sought to be recalled has not held office during the current term for more than 90 days.

2) The officer sought to be recalled was subject to an unsuccessful recall within the last 6 months.

3) The officer sought to be recalled has a term of office that ends in 6 months or less.

**F. Circulating the Petition**

Once the recall petition has been approved by the city clerk, the petition may be circulated in order to obtain the appropriate number of signatures to qualify for a recall. The recall petition may only be circulated and signed by registered voters in the jurisdiction who are qualified to vote for the officer sought to be recalled (Elec. Code § 11045). Any voter may
withdraw his or her signature from the recall petition upon filing a written request with the appropriate elections official prior to the day the petition section on which their signature appears is filed (Elec. Code § 11303).

The appropriate number of signatures required to qualify a particular city recall must be equal in number to not less than the following percent of registered voters in the electoral jurisdiction:

1) Thirty percent if the registration is less than 1,000.
2) Twenty-five percent if the registration is less than 10,000 but at least 1,000.
3) Twenty percent if the registration is less than 50,000 but at least 10,000.
4) Fifteen percent if the registration is less than 100,000 but at least 50,000.
5) Ten percent if the registration is 100,000 or above.

For recall petition signatures, the number of registered voters necessary to qualify the recall is based on the last statement of registration filed by the County Registrar of Voters with the Secretary of State prior to the City Clerk’s determination that the form of the petition satisfies statutory requirements (Elec. Code § 1121(b)).

G. Filing the Petition; Time Within Which To Circulate

The proponents must submit the signed petition back to the elections official within the following number of days following the City Clerk’s notification that the form of the petition meets statutory requirements:

1) 40 days if the electoral jurisdiction has less than 1,000 registered voters.
2) 60 days if the electoral jurisdiction has less than 5,000 registered voters but at least 1,000.
3) 90 days if the electoral jurisdiction has less than 10,000 registered voters but at least 5,000.
4) 120 days if the electoral jurisdiction has less than 50,000 registered voters but at least 10,000.
5) 160 days if the electoral jurisdiction has 50,000 registered voters or more (Elec. Code § 11220).

The petition must be filed with the city clerk by either the proponents or any person(s) authorized in writing by a proponent (which must be included with the filing), and all sections of the petition circulated in a single county must be filed at one time (Elec. Code § 11222).
For purpose of the time period to circulate petitions, the number of registered voters is based on the last statement of registration filed by the County Registrar of Voters with the Secretary of State prior to the City Clerk’s determination that the form of the petition satisfies statutory requirements (Elec. Code § 11220(b)).

**H. Examination and Certification of the Petition**

Upon presentation of the petition for filing, the city clerk (or County Registrar of Voters, if requested) must conduct a prima facie review of the petition to determine if the petition contains sufficient signatures. If so, the clerk has a ministerial duty to accept the petition for filing. The petition will then be deemed as “filed” on that date (Elec. Code § 11222).

Following the initial filing of the petition, the city clerk must verify every signature submitted. Typically, this function is performed by the County Registrar of Voters at the request of the city clerk. If there are more than 500 signatures submitted, a random sampling signature verification technique may be used.

If there are 500 or fewer signatures, and if the random sample technique is not used, the clerk has 30 days from the date of filing to determine whether the petition is signed by the required number of voters, certify the results of the examination, and notify the proponents. If the petition is found to have a sufficient number of signatures, the city clerk must certify the results to the city council at its next regular meeting. If the petition is found to have an insufficient number of signatures, the city clerk must certify this result as well (Elec. Code § 11224).

If there are more than 500 signatures and the elections official chooses to use the random sampling technique, the elections official must examine at least 500 or 5 percent (whichever is greater) of the signatures. The elections official must complete this examination within 30 days of the filing of the petition. In calculating the examination, the percentage of sample signatures that are deemed valid, shall equal the percentage of the entire number of signatures that are deemed valid (Elec. Code § 11225). For example, if 73 percent of the sample signatures are found to be valid, then 73 percent of the entire number of signatures shall be deemed valid.

- If the statistical sampling shows that the number of valid signatures is greater than 110 percent of the required number, the city clerk must certify the petition to be sufficient without further verification, and the city clerk must certify the results of the examination to the city council at its next regular meeting (Elec. Code § 11225).

- If the statistical sampling shows that the number of valid signatures is within 90-110 percent of the number of signatures needed, the elections official must examine and verify each signature filed. If the result of this examination shows

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3 In examining the signatures, the elections official may use the duplicate file of affidavits maintained, or may check the signatures against facsimiles of voters’ signatures, provided the method of preparing and displaying the facsimiles complies with law (Elec. Code § 11225(c)).

that the petition has the required number of signatures, then the city clerk must certify the results of the examination to the city council at its next regular meeting (Elec. Code § 11225).

- If the statistical sampling shows that the number of valid signatures is less than 90 percent of the required number, the city clerk shall certify the petition to be insufficient and no action shall be taken (Elec. Code § 11225).

After the completion of the examination, the city clerk must attach a certificate to the petition declaring the result of the examination and then notify the proponents of either the sufficiency or insufficiency of the petition (Elec. Code §§ 11224, 11225)

I. Certificate of Insufficiency of the Petition

If the certificate declares the petition to be insufficient, no further action will be taken, but the petition will remain on file (Elec. Code § 1126).

Subsequent to a declaration of insufficiency, the proponents whose names are listed on the Notice of Intention must be allowed to examine the petition signatures in order to determine which signatures were disqualified and for what reason(s) the disqualifications were made (Elec. Code § 1126.)

J. Certificate of Sufficiency of the Petition

If the signatures on the petition are sufficient, the city clerk must submit a certificate declaring the sufficiency of the petition to the city council at its next regular meeting. The certificate must contain:

1) The name of the officer whose recall is sought.
2) The title of his or her office.
3) The number of signatures required by law.
4) The total number of signatures on the petition.
5) The number of valid signatures on the petition.
6) The number of signatures which were disqualified.

(Elec. Code § 1127).

K. The Recall Election

1. Notice

Within 14 days after the meeting at which the city council receives the certificate of sufficiency, the city council must issue an order stating that a recall election will be held to determine whether or not the officer named in the petition will be recalled (Elec. Code § 11240)
In the event that the city council fails to act, the County Registrar of Voters is permitted to set an election on its own motion. (Elec. Code § 11241).

2. Timing

The recall election shall be held no less than 88 nor more than 125 days after the issuance of the order from the city council or County Registrar of Voters. If a regular or special election is already scheduled in the electoral jurisdiction of the officer sought to be recalled within the 88-125 day time period, the recall election must be held on the same day and consolidated with the regular or special election (Elec. Code § 11225).

3. Candidates

Candidate nominations for local officers must be filed for no less than 75 days prior to the date of the election, and may not be filed the day the order of the election is issued (Elec. Code § 11381).

4. Ballot Form/Contents

A sample ballot must be mailed to each registered voter at least ten days prior to the recall election by the elections official responsible for preparing the ballot (Elec. Code § 11324). The sample ballot must be accompanied by the statement of reasons from the Notice of Intention, with the answer of each officer sought to be recalled printed on the same or facing page as the statement (Elec. Code § 11325). The officer whose recall is being sought may also file a statement with the elections official to be sent to each voter with the sample ballot (Elec. Code § 11327).

The contents of the recall election ballot must contain the question, “Shall [name of officer sought to be recalled] be recalled (removed) from the office of [title of office]??” (Elec. Code § 11320). The ballot must also contain the names of the candidates nominated to succeed the official sought to be recalled and a space for a write-in candidate (Elec. Code § 11322). A vote cast for a recall candidate will not be counted unless the voter also voted either for or against the recall of the officer sought to be recalled (Elec. Code § 11382).

5. Outcome of the Election

If one-half or more of the votes are not in favor of recall, the officer sought to be recalled shall continue in office (Elec. Code § 11383) and will be immune from any further recall petitions against him or her for the six months succeeding the recall election (Elec. Code § 11007).

If the majority of votes are in favor of recall, the officer is removed and, if there are candidates running to replace the recalled official, the candidate who receives the highest number of votes is the successor to the unexpired term of the recalled officer (Elec. Code § 11385). The officer that is recalled, may not be a candidate to succeed themselves (Cal. Const. Art. II, section 5

The statement must be in accordance with Elec. Code § 13307 which provides format requirements for candidate statements.
15), but she or he is not prevented from again becoming a candidate at the next election for the next term of office.

III. ETHICAL CONSIDERATIONS

A. California Public Records Act Exception

Under the California Public Records Act (“PRA”) government records are made available to the public upon request. When enacting the PRA, the legislature stated that access to information concerning the conduct of the public’s business is a “fundamental and necessary right for every person in the State” (Gov. Code § 6250). However, the Legislature also recognized specific overriding rights, privileges, and interests, and enacted exemptions that allow for the government to withhold the disclosure of certain records and documents based on these exemptions. One such exemption in the PRA includes all materials indicating the names of persons who have signed recall petitions (Gov. Code § 6253.5).

The language of Gov. Code § 6253.5 states:

“all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda.” (Emph. suppl.)

This exemption protects the recall petitioner’s privacy and recognizes the possibility of negative backlash that may accompany a demand for the recall of a public official. Through the withholding of petitioner’s identities the government may limit attempts to influence, intimidate or sway proponents of a recall and protect them from the overall judgment of the general public.

B. Use of Public Funds

When expending public funds to finance a recall election or any political process, current California law mandates that local governments have an obligation to take a neutral position in their stance on a recall election. The seminal Supreme Court decision Stanson v. Mott (1976) 17 Cal.3d 20, and its progeny, stand for the proposition that a local government must not spend public funds to assist the passage or defeat of a ballot measure or elective office.

California Government Code § 54964 reinforces the ruling in Mott stating, “a city officer, employee or consultant may not expend or authorize the expenditure of any city funds to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate by the voters.” The statute defines “expenditure” to include any payments used for communications that “expressly advocate” the election or defeat of a clearly identified candidate.

Thus, local governments must be conscious of any potential for the advocacy of a candidate or of the showing of bias toward the political process through such expenditures. This
is of particular importance in recall elections where one of the very members of a city’s
governing body is subject to removal.