

From: Hawkins, Dennis (Clerk)

Sent: Thursday, June 07, 2012 12:36 PM

To: Figone, Debra; Doyle, Richard; Cordell, LaDoris; Erickson, Sharon; Shikada, Ed; Moran, Ed; Herrick, Lisa; Kenealey, Danielle; Maguire, Jennifer; Vossbrink, David; Taber, Toni; Sato, Norm; Cain, Anne; Chu, Kansen; Constant, Pete; Herrera, Rose; Kalra, Ash; Liccardo, Sam; Nguyen, Madison; Oliverio, Pierluigi; Pyle, Nancy; Reed, Chuck; Rocha, Donald; Xavier Campos <xavier.campos@sanjoseca.gov>

Cc: Antonio, Rhovlynn; Fedor, Denelle; Furman, Pete; Gomez, Armando; Henninger, Ragan; Josue Garcia <josue.garcia@sanjoseca.gov>; Mary Anne Groen <maryanne.groen@sanjoseca.gov>; Moua, Louansee; Okpaku, Joseph; Peter Hamilton <peter.hamilton@sanjoseca.gov>; Stephanie Fong <stephanie.fong@sanjoseca.gov>; Sutherland, Kathy  
Subject: Proposed Charter amendment re: Library Funding

Earlier this week, the proponents of the Library funding Charter amendment indicated that they would be turning in their petitions this week. At that time, we advised them that they would need 19,161 valid signatures in order to qualify the initiative for the ballot. However, after additional consultation with the Office of the City Attorney on Wednesday afternoon, the City Attorney determined that even though the library petition is an initiative, it is a Charter amendment and subject to different and additional requirements. We informed the proponents yesterday of this issue and clarified the signature requirements for their measure.

As a Charter amendment, the minimum number of signatures required to qualify the measure is substantially higher. The City Charter is silent as to the percentage of signatures required for a Charter amendment and references the California Elections Code. Under Elections Code section 9255 (b) (2), see excerpt below, the proponents need to obtain the signatures of 15% of San Jose registered voters as reported to the Secretary of State in effect as of the date of publication of their Notice of Intent to begin circulating the petition, not the 5% of signatures necessary to qualify an initiative that seeks to enact an Ordinance. In comparison, the minimum wage initiative proposed a new Ordinance, and the 5% threshold is appropriate, whereas the Library initiative proposes a Charter amendment, and the 15% requirement established in the Elections Code is operative. Thus, the Library Charter amendment requires 57,483 valid signatures in order to qualify for the ballot.

To our knowledge, this is the first time that a Charter change by initiative has been proposed in San Jose. Previous Charter amendments have been recommended through a Charter Commission or placed on the ballot by the City Council.

We regret that the conflicts between the Elections Code and City Charter and higher qualification threshold were not identified sooner. We understand how the proponents may be frustrated with this new analysis and the larger number of signatures required to qualify the measure. However, we are clear that we do not provide legal or other advice to proponents of measures and highly recommend that they consult with their own legal counsel and adhere to all applicable legal requirements as they prepare their measures for circulation. In the final analysis, we strive to ensure that any measures moving to the ballot are legal and fully comply with the terms of the Charter and state law, before City resources are used.

As a result, the proponents have informed us that they will not be turning in their petitions at this time. They have until September 18, 2012 in which to gather sufficient signatures and to turn in their petitions. Depending on how the proponents proceed, it is possible that this measure may not qualify for the November 2012 ballot. If the proponents do not meet the timeline for the November ballot, and should they proceed and gather sufficient signatures, the measure could be scheduled for the next regular Municipal Election, June 2014.

Please contact me if you have any questions regarding this matter.

California Elections Code 9255.

(a) A charter or charter amendment proposed by a charter commission, whether elected or appointed by a governing body, for a city or city and county shall be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election date pursuant to Section 1200, 1201, or 1301, provided that there are at least 95 days before the election. A charter commission may also submit a charter pursuant to Section 34455 of the Government Code.

(b) The following city or city and county charter proposals shall be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election, pursuant to Section 1200, 1201, or 1301, provided that there are at least 88 days before the election:

(1) An amendment or repeal of a charter proposed by the governing body of a city or a city and county on its own motion.

(2) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city.

(3) 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.

(4) 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.

(c) Charter proposals by the governing body and charter proposals by petition of the voters may be submitted at the same election.

(d) 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.

Dennis D. Hawkins, CMC

City Clerk

City of San Jose

200 E. Santa Clara Street, Wing - 2nd Floor

San Jose, CA 95113-1905

Phone: 408.535.1275 - Fax: 408.292.6207