



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

SUBJECT: CALLING FOR A
RECALL ELECTION

FROM: Lee Price, MMC
City Clerk

DATE: October 23, 2008

RECOMMENDATION

Adopt a resolution calling for a Recall Election on March 3, 2009.

OUTCOME

The Santa Clara County Registrar of Voters has certified the petition to be sufficient to initiate proceedings of recall. The City Council has accepted the certificate. The adoption of the resolution calling for a Recall Election is mandated by Elections Code Section 11240, which requires the City Council to issue an order stating that an election shall be held to determine whether or not Council Member Madison Nguyen shall be recalled.

BACKGROUND

On April 22, 2008, proponents of an effort to recall Councilmember Madison Nguyen submitted a Notice of Intention to Circulate a Recall Petition in the Office of the City Clerk. Councilmember Nguyen filed a 200-word "Answer to the Notice of Intent" on August 29, 2008. The City Clerk approved the petition format and the proponents began circulating the petition on May 15, 2008. On August 29, 2008, proponents of the recall Councilmember Madison Nguyen campaign submitted the petition. The Office of the City Clerk conducted a prima facie review and raw count of the petition and transferred it to the County Registrar of Voters for signature verification. The recall petition contained 5,180 signatures. City Charter Section 1603 (d) requires that a recall petition be signed by at least 12% of the total number of persons residing in the District who are eligible to vote. In order for this petition to qualify for the ballot, 3,162 valid signatures were needed.

The Santa Clara County Registrar of Voters performed a random sampling technique, as is permissible under the California Elections Code (Section 11225), utilizing petition verification guidelines issued by the California Secretary of State. 500 signatures were randomly selected and, of those, 461 signatures were valid. The random sampling projects that of the 5,180 unverified signatures submitted, 4,775 would be valid. From this examination, the Registrar certified the petition to be sufficient to initiate proceedings of recall. Pursuant to Elections Code Section 11227, the City Council accepted the Certificate of Sufficiency on October 21, 2008.

HONORABLE MAYOR AND CITY COUNCIL
Due Date
Subject: Calling for a Special Recall Election
Page #2

ANALYSIS

Elections Code Section 11242 requires that the recall election be held not less than 88, nor more than 125 days from the call of the election. It is recommended that the City Council call for a Recall Election on March 3, 2009. This date is within the required timeline and is an established election date recognized by the State and other jurisdictions. At this point in time, the Registrar is aware of only one other election matter tentatively considered for March 3, 2009 but it would not be held concurrent with an election in District 7, therefore no cost savings would be realized. However, it is still possible that the State, County or other special district in Santa Clara County could call for an election on March 3, 2009. It remains prudent to request consolidation with the County to consolidate the Recall Election with any other election on that date to take advantage of any potential cost savings.

Initially, the City Clerk and the Registrar discussed the potential opportunity for the Council to consider conducting an all-mail ballot in lieu of the traditional combination precinct/mail ballot election in an effort to save costs and increase voter turnout. Legal research concludes that an all-mail ballot election is not an option for a Recall Election in the City of San José. Elections Code Section 4000-4004 reveals that only small cities (less than 100,000) and special districts under certain conditions, are permitted to conduct all-mail ballot elections. San José districts are considered electoral jurisdictions and do not qualify as "special" districts under State law.

COST SUMMARY/IMPLICATIONS

Election costs depend on whether or not the election is consolidated with any other election. Assuming no other election is consolidated with the Recall Election on March 3, 2009, the estimated cost to conduct the Recall Election is \$503,129.



LEE PRICE, MMC
City Clerk

For questions please contact Lee Price, City Clerk, at (408) 535-1252

Attachments:

Draft Resolution Calling for a Recall Election on March 3, 2009

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF A RECALL ELECTION TO BE HELD IN DISTRICT 7 OF THE CITY OF SAN JOSE ON MARCH 3, 2009 AND REQUESTING VARIOUS SERVICES FROM THE COUNTY OF SANTA CLARA REGISTRAR OF VOTERS

WHEREAS, on April 22, 2008, the City Clerk received a Notice of Intention to Circulate Recall Petition which proposed the recall of District 7 Councilmember Madison Nguyen; and

WHEREAS, on April 29, 2008, the City Clerk received an Answer to Notice of Intention to Circulate Recall Petition from Councilmember Nguyen; and

WHEREAS, on August 29, 2008, the City Clerk accepted the Recall Petition for filing; and

WHEREAS, on October 21, 2008, the City Council accepted a Certificate of Sufficiency of the Recall Petition from the Registrar of Voters and scheduled for the November 4, 2008 Council meeting an agenda item calling a Recall Election in District 7 for March 3, 2009; and

WHEREAS, California Elections Code Section 11240 requires that the City Council, within 14 days after the meeting at which it accepts the Certificate of Sufficiency, call for

an election to be held to determine whether or not the officer named in the petition shall be recalled; and

WHEREAS, California Elections Code Section 11242 requires that the election be held not less than 88, nor more than 125, days from the call of the election.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Recall Election is hereby called and ordered to be held in City of San Jose Council District 7 on March 3, 2009, in accordance with California Elections Code Sections 11240 and 11242 to determine whether Councilmember Madison Nguyen of City Council District 7 will be recalled from the Office of Councilmember.

SECTION 2. The following question will appear on the ballot of the Recall Election:

Shall Madison Nguyen be recalled (removed) from the office of Councilmember, District 7, of the City of San Jose?

YES	
NO	

SECTION 3. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Recall Election called and ordered to be held on March 3, 2009 with any other election that may be held on that date.

SECTION 4. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San Jose such services as the City Clerk of the City of San Jose may request relating to the Recall Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter information pamphlets, sample ballots, and ballots; Preparation of tabulation of result of votes cast.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Recall Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary in order to facilitate the Recall Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Recall Election.

SECTION 8. Pursuant to Section 12111 of the California Elections Code and Section 6061 of the California Government Code, the City Council hereby directs the City Clerk to (a) cause a notice of the measure to be voted on to be published in the San Jose

Mercury News, a newspaper of regular circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Recall Election into a single notice; (c) cause copies of the proposed measure to be printed in convenient pamphlet form and in type of not less than 10-point; (d) cause copies of that pamphlet to be mailed to each of the qualified electors of the City of San José; and (e) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Recall Election.

ADOPTED this 4th day of November, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk