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CONTENTS

FEATURE ARTICLE

Tips for the Unwary: Understanding the Processing Steps Regarding Local Initiatives and Referenda by Michael P. Durkee, Esq., with Sean Crafts... 85

LAND USE NEWS

House Proposed Bill Would Recraft the Endangered Species Act to Incorporate Landowners' Interests. 91

Two New Statutes Amend California's UST Fund Law and Create New Obligations Regarding MTBE. 92

California's Proposition 65 Amended to Require Public Notice of Lawsuits and Settlements. 93

Fourth District Court of Appeal Rethinks Its Decision in *Mills Land & Water Company v. The City of Huntington Beach*: Grants Petition for Rehearing. 94

RECENT FEDERAL DECISIONS

Seventh Circuit Upholds the Corps' Clean Water Act Jurisdiction over Isolated Waters under Migratory Bird Rule Where a Particular Water Body Is Actually Used as Habitat. 95

Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, et al., ___ F.3d ___, Case No. 98-2277 (7th Cir. Oct. 7, 1999).

RECENT CALIFORNIA DECISIONS

Court of Appeal:

Court of Appeal Upholds Invalidation of Initiative Petition For Repeal of San Francisco Stadium Measures Due to False and Misleading Statements. 98

San Francisco Forty-Niners v. Nishioka, et al., 75 Cal.App.4th 637, 89 Cal. Rptr. 2d 388 (1st Dist. October. 6, 1999).

Continued on next page

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FEATURE ARTICLE

TIPS FOR THE UNWARY: UNDERSTANDING THE PROCESSING STEPS REGARDING LOCAL INITIATIVES AND REFERENDA

By Michael P. Durkee, Esq., with Sean Crafts

Whether you represent a pro-development client, a citizens' group concerned about urban growth, or a city or county overseeing the process, understanding the local ballot measure process (initiatives and referenda) is essential. This article serves as an overview of the procedural steps relating to local ballot measures, highlighting the statutory tasks and timelines that must be observed

Voter-Sponsored Initiatives

Petition Procedures

Notice of Intention. Initiative proponents must file a "Notice of Intention" to circulate the Initiative Petition with the elections official. California Elections Code¹ § 9202(a) [county site²: 9103(a)]. The "elections official" is defined as a clerk or any person who is charged with the duty of conducting an election or a county clerk, city clerk, registrar of voters, elections supervisor, or governing board having jurisdiction over elections within any county, city, or district within the state. § 320. The Notice must be accompanied by the actual written text of the Initiative and may be accompanied by an additional written statement of no more than 500 words "setting forth the reasons for the petition." The Notice of Intention must be signed by at least one of

the proponents and must be in substantially the form indicated in § 9202 (a) [§ 9104].

Any person filing a Notice of Intention must pay a fee of no less than \$200, to be refunded if the elections official certifies the sufficiency of the Petition within one year of the date of filing. § 9202(b) [§ 9103].

Ballot Title and Summary. The Initiative proponents must file a copy of the proposed Initiative with the elections official and request that a ballot "Title" and "Summary" be prepared. § 9203(a) [§ 9105 (a)]. The request must include the address of the person proposing the Initiative. The elections official then must immediately transmit a copy of the Initiative to the city attorney/county counsel, who has 15 days from the date of filing to prepare the Title and Summary for return to the elections official [This is not required by the county]. The ballot Title to be prepared by the city attorney/county counsel must be drafted as follows:

The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the city attorney [county counsel] shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor

¹ All section references are to the California Elections Code unless otherwise noted.

² Election Code section citations are given for both city (no italics) and county (in brackets and italics).

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be likely to create prejudice, for or against the proposed measure. § 9203(a) [§ 9105 (a)].

A proponent (or, potentially, an opponent) may seek a writ of mandate to amend the Title and/or Summary prepared by the public agency attorney [county counsel]. § 9204 [§ 9106].

Placement of Title and Summary. A copy of the ballot Title and Summary must then be sent by the elections official to the person who filed the Initiative. § 9203(b) [§ 9105(b)]. The person who filed the Initiative must place this Title and Summary across the top of *each* section of the Initiative Petition on each page on which signatures are to appear, above the text of the proposed measure in roman boldface type not smaller than 12-point. *Id.* The heading of the proposed measure must be in substantially the form set out in § 9203 (b) [§ 9105(c)].

Publication. The Notice of Intent and the Title and Summary must be published at least once in a newspaper of general circulation. § 9205(a) [§ 9105 (b)]. Make sure to check with the newspaper of general circulation for the procedures for submitting legal notices.

Commence Circulation. Only after these steps are completed may the Petition be circulated for signature. § 9207 [§ 9108].

Proof of Publication. Within ten days of publication, a copy of the Notice of Intent, the Title and Summary, and an affidavit from the Newspaper certifying the fact of publication, must be filed with the elections official during normal business hours. § 9206 [§9105 (b); no time frame specified for filing proof with county].

Time Limit to Collect Signatures. The proponents of the Initiative have 180 days from the date of receipt of the Title and Summary to obtain signatures and file the signed Petitions with the elections official during normal office hours. § 9208 [§ 9110].

Report. While the Initiative Petition is being circulated, and prior to the adoption of the ordinance or the order of an election, as explained below, the city/county council may refer the Initiative to a city/county agency for the preparation of a report to determine its fiscal impact, effect on the internal consistency of the city's/county's general and specific plans and other planning and zoning regulations, and any other matters requested. § 9212(a) [§9111(a)]. The report must be submitted to the City Council within the time prescribed by the City Council/Board

of Supervisors, but no later than 30 days after the Initiative Petition is certified for sufficiency by the elections official, as explained in number ten below.

Filing the Petition. The procedure for filing the Initiative Petition is described in detail in § 9210 [§ 9113]. All sections of a Petition must be filed at one time, whereupon the elections official will determine if the requisite number of valid signatures have been obtained based upon the most recent tabulation of registered voters.

Examining the Petition. After the Petition is filed, the elections official must examine it within 30 days of filing (excluding Saturdays, Sundays and holidays) to determine if the requisite number of people signed it. § § 9114, 9211 [§ 9114]. The elections official must then certify the Petition to the City Council at its next regular meeting if the Petition is found to contain sufficient signatures. § 9114 [§ 9114].

Special Election. If the Initiative Petition is signed by no fewer than 15 percent [20 percent] of the City's [County's] registered voters and the Initiative contains an express request that it be submitted immediately for a vote of the people at a special election, the City Council shall either adopt the Initiative within ten days after it is introduced at a regular meeting, immediately order a special election to be held "not less 88 nor more than 103 days after the date of the order," or order a report as described in number eight above. § 9214 [§ 9116; bold text not included in county code]. However, the Initiative election may be conducted within 180 days following the order of Initiative election to consolidate that election with the next regular or special election occurring within or partially within the same territory where the Initiative election is conducted. § 1405(a)(1). Conversely, to avoid holding more than one special election within any 180-day period, the date for holding the special election may be fixed later than 103 days but as early as practicable after the expiration of 180 days from the last special election. § 1405(a)(2).

General Election. If the Initiative Petition is signed by less than 15 percent [20 percent] but not less than ten percent of the voters, the Initiative must be submitted to the voters at the next regular municipal [statewide] election occurring not less than 88 days from the date of the order of the legislative body. § 9215 [§ 9118]. If the Petition is signed by less than ten percent of the voters, the Petition is void.

Binding Effect. The Initiative becomes binding if a majority of the voters approve it. § 9217. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council, and shall go into effect ten days after that date.

Petition Form and Signatures

Official Form. Each Petition section must contain: (a) signature, (b) the printed name, (c) the residence address and the (d) name of the community of each person who signs it. §§ 9020, 9201 [§ 9101].

Qualified Signer. In addition, only a person who is a qualified registered voter at the time of signing the Petition is entitled to sign it. *Id.*

Numbering. Each signature on the Petition must be numbered consecutively, beginning with the number one and continuing through the number of signature spaces allotted to each section. § 100. In other words, you can have multiple "sections," each starting with the number one, but within each section you must run consecutive numbers.

Request for Circulator. The Petition must include a notice to the signer that he or she has a right to ask the Petition circulator whether the circulator is a volunteer or is being paid. § 101. The notice must be in 12-point type, before the space for voters' signatures, addresses, etc. Pursuant to § 101, it must state as follows:

NOTICE TO THE PUBLIC: THIS PETITION
MAY BE CIRCULATED BY A PAID SIGNA-
TURE GATHERER OR A VOLUNTEER.
YOU HAVE THE RIGHT TO ASK.

Qualification of Circulator. Any person who is a registered voter may circulate the Initiative, *provided he or she is a resident of the city where the Initiative will be voted upon.* § 9209 [§ 9109; bold text not requirement of county]. In addition, persons who circulate the Petition may also sign the Petition, provided they otherwise qualify to sign it. § 106.

Affidavit. The Petition must be accompanied by an affidavit or declaration from each circulator. § 9209 [§ 9109]. The requirements of the declaration are further described in §§ 9022 and 104.

Verification of Signatures. Voters' signatures are verified by the elections official by determining whether the residence address on the petition or

paper is the same as the residence address on the affidavit of registration (bound volumes maintained by the county elections official pursuant to § 347). § 105. If the addresses are different, or if the Petition does not specify the residence address, or does not contain the information required by § 9020, the affected signature is not counted as valid.

Voter-Sponsored Referendum

Challenging an Ordinance

Generally. Most city ordinances become effective 30 days after final passage. § 9235 [§ 9141]. Therefore, persons seeking to challenge an ordinance have 30 days after its adoption to file a referendum petition. § 9237 [§ 9144]. The Referendum petition protesting the adoption of an ordinance must be *circulated by a qualified registered voter of the City* and must be submitted to the elections official during normal office hours within those 30 days. [bold text not required at county level].

Minimum Signatures. The petition must be signed by not less than percent of the voters of the City (*if the City has more than 1,000 registered voters*) according to the county election official's last official report of registration to the Secretary of State. [bold text not required at county level].

Ordinance Suspended. Once the Referendum petition is submitted, the effective date of the ordinance is suspended and the legislative body must reconsider the ordinance. § 9237 [§ 9144].

Note that, in contrast to the Initiative procedure, a Referendum need not be submitted to the city for preparation of a title and summary and need not be published.

The Referendum Petition

Printed Wording. The Referendum petition must have printed across the top of each page the following: "Referendum Against an Ordinance Passed by the City Council."

Title and Text of Ordinance. Each section of the Referendum petition must bear the identifying number or title and the text of the ordinance or portion thereof being challenged by the Referendum. § 9238 (b) [§ 9147 (b)]. The petition must be designed in the same form as that described in § 9020,

as with Initiatives, and must contain certain information from the signer, as previously described.

Qualified Signer; Circulator. Only a person who is a qualified registered voter of the City (at the time of signing the petition) is entitled to sign it. § 9020. The numbering of the signatures in each petition section and the form of the petition are as described in the Initiatives part of this article. Note that, in contrast to an Initiative petition, a Referendum petition need not contain a notice advising the public that they have a right to ask whether the circulator is a volunteer or is being paid.

Circulator Declaration. Each section of the Referendum petition must also have attached to it a declaration of the person soliciting the signatures. § 9238(c). As with Initiatives, the declaration must be in substantially the same form as set forth in § 9022 (declaration of person circulating *Initiative* petition), except that it must declare that the circulator is a voter of the city and must state his or her residence address at the time of the execution of the declaration. As with initiatives, the person circulating the petition may also sign it, provided he or she is otherwise qualified to sign the petition (*i.e.*, the circulator is also a registered voter of the city where the petition is being circulated). §§ 9238(c), 106(b). [There is no mention of this in the county codes].

Filing of Petition. Section 9239 [§ 9144] requires Referendum petitions to be accepted for filing by the elections official and the number of signatures thereon determined by the elections official in the same manner as in § 9210. Like the Initiative petition, the Referendum petition must be filed during normal office hours of the elections official, as posted. § 9239. [There is no mention of this requirement in the county codes].

Examination of Petition. After the Referendum petition is filed, the elections official must examine the petition and certify the results in the same manner as county petitions are certified. § 9240 [§§ 9114, 9115]. This requires the elections official to examine the petition within 30 days of its filing, excluding Saturdays, Sundays and holidays, to determine if it has the requisite number of signatures based on voter registration records. § 9114 [§ 9114]. An elections official "examines" a Referendum petition by determining whether the residence address on the petition is the same as the residence address on the affidavit of registration (bound vol-

umes maintained by the county elections official pursuant to § 347). § 105. If the addresses are different, or if the petition does not specify the residence address or does not contain the information required by § 9020, the affected signature is not counted as valid. *Id.* A certificate showing the results of the examination must be attached to the petition. § 9114 [§ 9114].

Elections Official Notification to Proponents. The elections official must notify the proponents of the Referendum petition whether it is sufficient or not. § 9114 [§ 9114]. If it is found to be insufficient, no further action is taken (but a new petition on the same subject at a later date is not precluded). If the petition is found to be sufficient, the elections official must certify the results of the examination to the City Council at its next regular meeting.

Action by Legislative Body. If the City Council does not entirely repeal the ordinance against which the petition is filed, it must submit the ordinance to the voters at the next regular municipal election occurring not less than 88 days after the order of the city council, or at a special election called for that purpose, occurring not less than 88 days after the order of the city council. § 9241 [§ 9145]. (A "regular election" is defined as an election, the specific time for the holding of which is prescribed by law (§ 348), a "municipal election" means elections in a general law city (§ 330), and a "special election" is defined as an election, the specific time for the holding of which is not prescribed by law. (§ 356). There is no definition for "regular municipal election," although one interpretation would be a general law city election, the time of which is prescribed by city law.

Effective: 12 Month Wait. The ordinance shall not become effective unless a majority of voters approves it. § 9241 [§ 9145]. If less than a majority of voters approves the ordinance, it cannot be enacted again by the city council for at least one year after the date of the repeal.

Council-Sponsored Initiatives

Generally. A city council may submit directly to the voters a proposition to repeal, amend or enact an ordinance (*i.e.*, an Initiative or Referendum) without a petition. § 9222 [§ 9140]. The ballot measure placed by the City Council may be voted on at any succeeding regular or special city election. If a majority of voters approve it at the election, the ordinance

shall be repealed, amended or enacted. A proposition may be submitted by ordinance or resolution of the city council.

Counter-Measure. A city-sponsored initiative may also be used to provide a “counter measure” to an initiative or referendum placed on the ballot through the petition process. When two ordinances with conflicting provisions are voted on at the same election, the one that receives the most votes controls. § 9221 [§ 9123].

Call Date. The City Council must set the election under the rules applicable to voter-sponsored measures. See, e.g., § 9225.

Ballot Measure Impartial Analysis, Arguments and Rebuttals

Typically, after an initiative or referendum measure has qualified for the ballot and an election date has been set, the elections official prepares election materials to be sent to each voter which include an “Impartial Analysis” prepared by the City Attorney, arguments for and against the measure, and rebuttal arguments for and against the measure.

What follows are the necessary steps for preparation and submission of ballot measure arguments and rebuttal arguments in a municipal election.

Ballot Arguments

Triggering Event. The “triggering event” for submission of arguments for or against a measure is the qualification of the measure for placement on the ballot in an upcoming municipal election. Once an Initiative qualifies for placement on the ballot, Initiative proponents and opponents may submit arguments in favor or against the Initiative for inclusion in the ballot. § 9281 [§ 9161]. Initially, proponents and opponents are allowed to submit “primary” or direct arguments (rebuttal arguments are discussed below), provided all necessary submission deadlines are met. § 9285 [§ 9167]. Initial arguments are limited to 300 words in length. § 9282 [§ 9162].

Arguments For and Against. Arguments may be submitted for or against a measure by the legislative body (City Council, in this instance), any member or members of the legislative body who are authorized by the body, any individual voter eligible to vote on the measure, any bona fide association of citizens or any combination of voters and associations. § 9219 [§ 9120], § 9282 [§ 9162].

Name Required. The elections official cannot accept any argument unless it is accompanied by the name or names of the persons or organizations submitting it. § 9283 [§ 9164]. If the argument is submitted with more than five signatures, only the first five will be printed.

Dates for Submission of Arguments. After an initiative qualifies for the ballot, the elections official is given discretion to set a final date for the submission of arguments, after which no arguments for or against a measure may be submitted. § 9286 [§ 9163]. The date must account for the time reasonably necessary to prepare and print arguments and sample ballots and to permit a ten-calendar-day public review period prior to the submission of elections materials to the printer for printing (see discussion below). Arguments submitted prior to the final date may be changed or withdrawn up to that date.

Argument-Author Statement. Section 9600 of the Elections Code provides that each author or proponent of an argument is required to sign and submit a form bearing witness to the true and correct nature of the argument, based on the best knowledge and belief of the author.

Choosing Among Argument Authors. If more than one argument is submitted in favor of or against a proposed measure within the relevant time period, the elections official must select one argument in favor of and one argument against the measure. § 9287 [§ 9166]. The elections official is required to give preference to the arguments in the following order: (1) The legislative body or members of the body, (2) An individual voter or association of citizens who are bona fide sponsors or proponents of the measure, (3) Bona fide associations of citizens, and finally, (4) Individual voters who are eligible to vote on the measure.

Title of Argument. The elections official must print across the front cover or first page of the printed arguments the heading “Arguments in support or opposition of the proposed laws are the opinions of the authors.” §§ 9282, 9162.

Copy of Argument. The elections official must enclose a printed copy of both arguments (for and against) with each sample ballot. *Id.* Each argument must be titled either “Argument in Favor of Measure ___” or “Argument Against Measure ___” (the blanks are to be filled in with the appropriate letter or number). Words in the titles shall not be counted when determining the total word count.

Rebuttal Arguments

Must be Authorized. Rebuttal arguments are permitted only if the legislative body authorizes them no later than the day on which the election is called. §§ 9220(b), 9285(b) [§ 9167].

Exchange of Arguments. Once rebuttal arguments are authorized and arguments for and against a measure are submitted, the elections official is charged with transmitting to the proponents and opponents copies of each other's arguments so that each side may prepare rebuttals. If an argument in favor of the measure has already been received when an argument opposed is submitted, the Elections Code requires the elections official to "immediately send copies of the opposition's argument to the measure proponents." § 9285(a) [§ 9167]. The proponents may then prepare a rebuttal argument of not more than 250 words for submission to the elections official. That rebuttal must then be copied and submitted by the elections official to the measure opponents, who are then allowed to prepare and submit a rebuttal of no more than 250 words.

Other Conditions to Rebuttal. If no argument in favor of the measure is submitted, then the measure opponents would be limited to submitting a "direct" argument only, as there would be no argument to rebut.

Filing Period for Rebuttal Argument. Consistent with the schedule for submitting rebuttal arguments described above, the Elections Code states that rebuttal arguments must be filed not more than ten days after the final date for filing direct arguments.

§ 9285 [§ 9167]. Rebuttal arguments are to be printed in the same manner as direct arguments and must immediately follow the direct argument they seek to rebut.

Conducting Election. Elections Code § 9243 states that elections held pursuant to the article on referenda are to be held in accordance with §§ 9217 to 9225, inclusive. [§ 9146 in accordance with various statutes].

City Attorney's Impartial Analysis

Transmittal to City Attorney. When a measure qualifies for a place on the ballot, the governing body may require the elections official to transmit a copy of the measure to the city attorney, [District Attorney, Auditor, County Counsel] who must then prepare an impartial analysis of the measure, not exceeding 500 words in length, that shows the "effect of the measure on the existing law and the operation of the measure." § 9280 [§ 9160]. The analysis must be printed preceding the arguments for and against a measure.

Other. If the entire text of the measure is not printed on the ballot or in the voter information portion of the sample ballot (because it is too long), the city attorney's impartial analysis must be followed by a notice indicating this fact. The city attorney's notice must take the form set out in § 9280 [§ 9160].

Conclusion

Clearly, when it comes to processing local ballot measures, heaven and hell lie in the details.

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