

REPORT



FROM CITY ATTORNEY

November 6, 2003

THE HONORABLE CITY COUNCIL
Palo Alto, California

Attention: Policy and Services Committee

RE: Local Election Procedures

Dear Members of the Council:

This is a joint report from the City Clerk's office and City Attorney's office.

Summary

The City Clerk is revising the election procedure materials distributed by her office to those interested in running for office or qualifying ballot measures in Palo Alto. The purpose of this report is to advise you of the changes that will be made and seek direction with respect to ballot argument signatures by board and commission members.

Background

The City Clerk administers local elections, enlisting the services of the County of Santa Clara to do so. The relevant procedures are in the Charter of the City of Palo Alto, Chapter 2.40 of the Palo Alto Municipal Code, and the California Elections Code. The City Clerk does not advise individual candidates or proponents or opponents of ballot measures on their campaigns or candidacies. However, she does provide information to all of these individuals about the rules applicable to Palo Alto elections.

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Individuals who participate in elections often do so in more than one jurisdiction. They report puzzlement when Palo Alto rules differ from practices in other local cities or counties. Another source of confusion is the fact that changes in state laws and new federal cases have made portions of the Palo Alto Charter unenforceable. A number of procedural questions arose during the last election. For all these reasons, the City Clerk has decided to revise the City's election materials now, before any new election when questions may arise again.

It is customary for the city council to specify, in the resolutions calling each election, whether board or commission members may use their official titles when signing ballot arguments. We recommend that the council either abandon this practice or codify it, rather than applying it on a case by case basis.

A summary of election procedures revisions is attached. They will be rewritten and incorporated into the Clerk's election materials.

Respectfully submitted,

WYNNE S. FURTH
Interim City Attorney

DONNA J. ROGERS
City Clerk

WSF:DR:syn

Attachment A: Summary of Election Procedures Changes and Clarifications

[Attachment A]

Election Procedures Revisions and Clarifications

A. The City Clerk will verify that a candidate is a registered voter when the candidate pulls nomination papers.

More than one individual has filed nomination papers without first registering as a voter in Palo Alto. These individuals are disqualified from being elected by Elections Code Section 201. No useful purpose is served by having nomination papers circulated for an individual who is not eligible to be elected. Early information will give the prospective candidate an opportunity to register and become eligible to pull and circulate the nomination paper and will prevent ineligible candidates from submitting papers or worse yet, being included in the ballot.

B. The City Clerk will not require that petition circulators be Palo Alto voters.

The Palo Alto Charter requires that circulators of recall petitions, (Article VI, Sec.1), initiatives, (Article VI, Sec. 2) and referendums (Article VI, Sec. 3), be Palo Alto voters. The United States Supreme Court in Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999) struck down as unconstitutional the requirement that circulators be voters within the jurisdiction. Therefore both Elections Code Sections 9209 and 9238(c) and the comparable City charter or ordinance requirement are unenforceable. Elections Code Section 102 provides that circulators must be voters within the State, and the Clerk will continue to enforce that requirement. Some argue that the requirement that circulators be voters of the state is unconstitutional, and there are several federal court cases supportive of this view. See, e.g., Kislov v. Rednour, 226 F. 3d 851 (7th Cir. 2000). Nonetheless, at present, the law is that they must be voters of the State, and no decision binding on the City holds otherwise.

C. Nomination petitions for candidates will be treated as public documents. Signatures on petitions for ballot measures will continue to be confidential.

Government Code Section 6253.5 of the Public Record Act ("the Act") specifically exempts initiative and referendum petitions from disclosure. It does not mention nomination petitions. Nomination petitions can be kept secret only if the public interest in nondisclosure outweighs the interest in disclosure. The only interest in nondisclosure that we can envision is a possible privacy interest on the part of the signers. However, because signing a nomination petition is a purely voluntary act, we do not believe that there is a privacy interest that would allow secrecy.

D. Addresses of candidates will be treated as public information.

Under certain circumstances authorized by specific statutes, cities and other public agencies are allowed not to disclose residence addresses of certain individuals. However, none of these rules apply specifically to those who have elected to place themselves in the public arena by running for public office. Therefore, in the absence of any statutory authorization to do otherwise, this information will be treated as public.

E. The City Council will have first priority for submitting a ballot argument for or against a measure; the submitter may choose up to five signers.

Under the Election Code Section 9282, the City Council, (or any of its members authorized by it) has the right to submit the argument for or against a measure. The code does not require that the council sign the argument; only that it, or its delegated members, submit the argument. The signers must be Palo Alto voters or "representatives of a bona fide association of citizens" that the submitter chooses.

F. Second priority for ballot arguments will go to the proponents of the measure, i.e., those who signed the notice of intent to circulate the petition. Signers must be voters or representatives of a bona fide association of citizens. The clerk will determine whether an organization qualifies.

Election Code Section 9287 is silent as to whether signers must be voters, but if this Section is to be harmonized with Section 9282, it would seem that they must be either voters

or representatives of a bona fide association of citizens. There is no requirement that such associations be located or headquartered in the city. A spokesperson of such an association may sign, even if that person is not a resident of the city.

G. The persons submitting the principal argument select the signers of the rebuttal arguments. They need not be the same individuals, but their signatures must be authorized in writing by the authors of the principal arguments.

Although the Elections Code does not make this explicit in the chapter on municipal elections, it is explicit in Section 9167 pertaining to county elections. We believe it reasonable to apply the same rules to both city and county elections in this case. There is no evidence that this language was intentionally omitted from Sections 9220 and 9285 pertaining to municipal elections. The use of different procedures is particularly confusing when elections are consolidated.

H. Councilmembers may use their official titles in signing ballot arguments, whether doing so as part of the majority or minority.

This is a documentation of existing practice, not a change. There are no requirements or limits for identification in the Elections Code as there are for candidate descriptions.