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Mr. Alex Ruiz  
City Manager and City Clerk

Ms. Cynthia Salcido  
Assistant City Clerk

City of San Luis, Arizona

RE: LEGAL OPINION REGARDING RECALL PETITION PROCESS

Dear Mr. Ruiz and Ms. Salcido:

Please consider this letter to be a written opinion from the Office of City Attorney. Applications for recall petitions for the Office of Mayor and certain positions on City Council have been filed and recall petition numbers have been issued. Petitions for recall are currently being circulated. In order to avoid problems, and to ensure proper process, officials charged with the duties of processing such petitions frequently look to legal opinions to guide decision making. This is encouraged by Arizona law. As provided by ARS §38-446:

38-446. Acts based on written opinions; immunity

Notwithstanding any provision of law to the contrary, no public officer or employee is personally liable for acts done in his official capacity in good faith reliance on . . . written opinions of the city or town attorney of the city or town for which the officer or employee serves or is employed.

A question has been presented regarding the time limits in which a person might be able to withdraw a signature from a recall petition. Arizona has a statute governing the procedure and timing. See ARS §1-261. This statute provides in applicable part:

1-261. Withdrawal of petition signature; payment of remuneration; violation; classification

A. . . . A person who has signed a recall petition may withdraw his signature from the petition not later than 5:00 p.m. on the date the petition containing the person's signature is *actually submitted for verification* pursuant to section 19-203.

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B. To withdraw a petition signature, a person may do any of the following:

1. Verify the withdrawal by signing a simple statement of intent to withdraw at the office of the receiving officer.
2. Mail a signed, notarized statement of intent to withdraw to the receiving officer.
3. Draw a line through the signature and printed name on the petition.

C. A signature withdrawn pursuant to subsection B of this section and received by the receiving officer within the time provided for in subsection A of this section shall not be counted in determining the legal sufficiency of the petition.

D. A person who knowingly gives or receives money or any other thing of value for signing a statement of signature withdrawal pursuant to subsection B of this section is guilty of a class 1 misdemeanor.

The procedure for processing recall petitions, after they have been circulated for signatures, is that they are first delivered to the office of city clerk who then performs the duties proscribed by ARS §19-121.A. If there appears to be sufficient signatures, copies of the petitions and affidavits are then sent to the County Recorder who then proceeds to perform the duties outlined in ARS §19-121.02.A. After the County Recorder performs the tasks outlined in the state statutes, the Recorder sends the results back to the City Clerk who then totals the number of valid signatures. See ARS §19-208.03. Only then, after the Clerk determines there are sufficient signatures, are the petitions deemed to be legally filed.

A question has been presented to the effect of when is the exact deadline to withdraw signatures, is it 5:00 p.m. on the date signed petitions are delivered by the circulators to the Office of City Clerk or is it the date that the Clerk sends the petitions to the Office of the County Recorder?

ARS §1-261 uses the phrase “. . . 5:00 p.m. on the date the petition . . . is *actually submitted for verification* pursuant to section 19-203.” The question of time to withdraw hinges on whether this is the date signed petitions are given to the Clerk or some later point in time.

From the date of application for recall petition, and the issuance of a petition number, circulators have 120 days in which to deliver signed petitions to the Clerk. See ARS §19-203.B.

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The starting point to answer these questions is obviously ARS §1-261. ARS §1-261 refers to ARS §19-203. ARS §19-203 states:

19-203. Recall petition; contents; submission for verification; nonacceptance

A. A recall petition shall contain a general statement of not more than two hundred words stating the grounds of the demand for the recall. ***The petition shall be submitted for verification of signatures*** to the office of the secretary of state if for a state officer, including a member of the legislature or a member of Congress, with the county officer in charge of elections if for a county or district officer or superior court judge, ***with the city or town clerk if for a city or town officer*** and with the county school superintendent if for a governing board member of a school district. No recall petition is considered filed for purposes of this chapter until the verification process is complete and the petition is filed pursuant to section 19-208.03, subsection A, paragraph 1.

B. ***A recall petition shall not be accepted for such verification if more than one hundred twenty days have passed*** since the date of submission of the application for recall petition, as prescribed by section 19-202.01.

This statute clearly uses the phrase “submitted for verification of signatures” when referring to the date petitions are returned to the City Clerk. ARS §19-208.01.A governs the transmittal of signatures to the County Recorder. This statute is as follows. Notice the phrasing.

19-208.01. Certification of number of signatures

A. Within ten days ***after submission of a recall petition for verification of signatures*** pursuant to section 19-203, ***the receiving officer*** shall perform the steps prescribed in section 19-121.01, subsection A. ***If the total number of signatures eligible for verification equals or exceeds the minimum number*** required by the Arizona Constitution ***the receiving officer shall reproduce a facsimile*** of the front of each signature sheet on which any signature eligible for verification appears. ***The receiving officer shall transmit promptly to each county recorder facsimile sheets*** on which a signature of any individual claiming to be a qualified elector of that county appears. The receiving officer shall also certify the number of sheets and signatures on the sheets that are being transmitted and retain a record of such certification in his office. Such receiving officer shall obtain a dated, signed receipt from the county recorder for copies of the original signature sheets transmitted under this section.

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Once again the phrase “submission of a recall petition for verification of signatures” is used to refer to the date when the Clerk gets the petitions from the circulators. The words “transmit promptly to each county recorder” are what are used to describe sending copies of the petitions to the Recorder for that office to perform its functions. Different words are used to describe the event of sending signatures to the Recorder than the words used to describe the event of the delivery of signed petitions to the Office of City Clerk by the circulators. Words describing the concept of a submittal of petitions for verification of signatures appears both in ARS §19-203 and ARS §19-208.01 for the event of the delivery of the petitions to the Clerk rather than the event of sending the signature sheets to the Recorder. Sending signature sheets to the Recorder uses completely different phraseology. *Johnson v. Maehling*, 123 Ariz. 15, 597 P.2d 1 (1979) held that Arizona’s recall provision in the Arizona Constitution was for the benefit of the public rather than the officials and thus its language will be construed liberally in favor of permitting recall elections. This case additionally held that the purpose of requiring a minimum number of signatures was to be sure a significant number of electors desired a recall before the public incurred the expense of an election.

Therefore, it is my opinion that it is the date that petitions are delivered to the Clerk that is the last date for withdrawal of signatures.

A second question has arisen regarding when signatures may begin to be withdrawn. ARS §1-261 answers this one as well. Here the statute states in applicable part: “A person who has signed a recall petition *may withdraw his signature* from the petition *not later than 5:00 p.m.* on the date the petition containing the person's signature is actually submitted for verification pursuant to section 19-203.” By using the phrase “not later than” this means that it can occur earlier than that deadline. Since no time is set as to when signature withdrawals may begin, it may occur at any time after petitions begin to be circulated up to 5:00 p.m. on the date the last petition is delivered to the Clerk for signature verification.

ARS §1-261 amended the law on signature removal in 1981. All case law on signature removal is prior to that date. The procedure before allowed an active campaign process to remove signatures between the time the petitions were delivered to the Clerk and the time the Recorder reported the results of signature verification and the petitions were deemed to be filed. The law specifically allowed such a campaign process to exist, and indeed recall efforts were affected by that process. (See *Johnson v. Maehling*, 123 Ariz. 15, 597 P.2d 1 (1979). In this case recall petitions were taken out against four members of Crane Elementary School Board. The campaign to obtain signature removals resulted in enough withdrawals so that two of the four members did not have to stand for recall election.) That process with the right to remove until the petitions are deemed filed still exists for initiative and referendum petitions. Only with respect to recall has the deadline been changed. (This is another reason for the above opinion on

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when the deadline exists.) However, ARS §1-261.A simply changed the outside deadline, it did not eliminate the right to remove one's signature. See ARS §§1-261.A and C. Indeed, ARS §1-261.B provides three methods of withdrawal. Once again, one of the goals sought by the Arizona Constitution is to be sure a significant number of electors actually desire a recall before the public incurs the expense of an election. As a result, there must be some reasonable time period in which the right to withdraw may be practically exercised. This time, therefore, is from the moment the petitions are first circulated until 5:00 p.m on the date the last petition is delivered to the Clerk for signature verification.

If you or any member of City Council has any questions regarding these matters, please do not hesitate to call.

Very truly yours,

  
Glenn Gimbut  
Assistant City Attorney

cc: Honorable Mayor Harper and Members of City Council  
Gerald Hunt, City Attorney

