



OCEANSIDE CITY CLERK REPORT

DATE: August 12, 2009

TO: Mayor and Councilmembers

FROM: Barbara Riegel Wayne, City Clerk

SUBJECT: Report certifying the sufficiency of the recall petition and adopting resolutions to: a) call the Special Municipal Election for Tuesday, December 8, 2009; b) request the San Diego County Board of Supervisors to render services related to the conduct of this election; and c) adopt regulations for candidates for elective office pertaining to materials and costs; and to approve a budget appropriation in the amount of \$483,000 from the General Fund Unallocated fund balance to the City Clerk Election budget to fund the costs of this Special Election

BACKGROUND

On January 15, 2009, a Notice of Intent to Circulate Petition for the recall of Councilmember Kern was filed in the City Clerk's Office. All procedures called for in the Elections Code were followed, culminating in the submittal of the petition by the recall proponents on June 25, 2009. Following a prima facie count, it was determined that the number of signatures collected met/exceeded the required 15% of registered Oceanside voters. The examination of the petition for sufficiency/insufficiency was contracted out to the San Diego County Registrar of Voters Office.

On July 27, the petition was found to be sufficient. The attached certification of the results is hereby being presented to Council per Elections Code Section 11224(d). It shows the following:

Councilmember Jerome Kern is the officer whose recall is sought.

The number of signatures required by law	=	11,389
The total number of signatures on the petition	=	17,027
The number of signatures verified	=	16,946
The number of signatures that were disqualified	=	5,557
The number of signatures found sufficient	=	11,389

ANALYSIS

With the certification of the petition as to sufficiency and per the Elections Code, Council may take up to 14 days to call the election. However, it is the City Clerk's recommendation that Council adopt the attached resolution at this time, giving notice of the special election and setting the election date for December 8, 2009. The election must be held within 88-125 days from Council's action (from August 12 that period ranges from November 8 through December 15) and must be held on a Tuesday. The date of Tuesday, December 8 was chosen based on the amount of work required to prepare for such an election, the preparation work for candidates, the issue of holidays during this time frame, and to provide sufficient time to meet all code requirements.

Staff is also requesting that Council adopt a resolution requesting the San Diego County Board of Supervisors to render specified services to the City related to the conduct of this election, as well as a resolution adopting certain regulations for candidates pertaining to materials submitted to the electorate and the associated costs.

FISCAL IMPACT

At this time, the estimated cost for this special election, including services to be rendered by the Registrar of Voters, is \$483,000. There are no known items scheduled for the December 8 election that would change the estimate due to any cost sharing. These funds would come from the General Fund Unallocated Fund Balance reserves, which is presently \$4.1 million.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

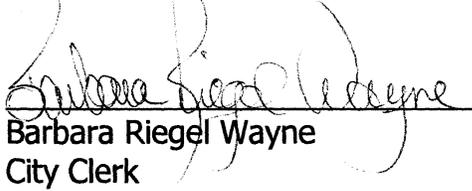
RECOMMENDATION

It is recommended that the City Council take action at this meeting on the following mandated resolutions/action required for the special election:

- 1) adoption of a resolution calling and giving notice of the holding of a special municipal election to be held Tuesday, December 8, 2009, for the purpose of submitting the question of the recall of Councilmember Kern, along with the required language for the election of a candidate to fill the vacancy [to the term ending November 2010] if the recall prevails
- 2) adoption of a resolution requesting the Board of Supervisors of the County of San Diego to render specified services to the City relating to the conduct of a special municipal election to be held on Tuesday, December 8, 2009
- 3) adoption of a resolution adopting regulations for candidates for elective office pertaining to materials submitted to the electorate and the costs thereof for the special municipal election to be held on Tuesday, December 8, 2009

- 4) approval of a budget appropriation in the amount of \$483,000 from the General Fund unallocated fund balance reserves to the City Clerk Department Election budget

Submitted by


Barbara Riegel Wayne
City Clerk

Attachments: Certificate of petition sufficiency
Resolutions (3)



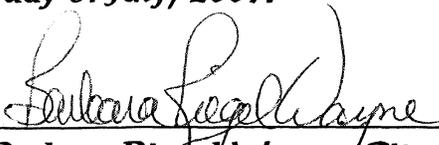
CERTIFICATE

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF OCEANSIDE

I, Barbara Riegel Wayne, City Clerk/Elections Official for the City of Oceanside, California, do hereby certify that the petition filed in the City Clerk's Office on June 25, 2009 for the Recall of Jerome Kern, Member of the City Council, has been examined in full accordance with Elections Code Section 11224, contracting with the Registrar of Voters to conduct the official examination from their records of registration. The results of the petition examination are as follows:

Number of signatures required by law	11,389
Number of sections submitted	1,866
Number of signatures submitted	17,027
Number of signatures verified	16,946
Number of signatures found NOT sufficient (includes 1,826 duplicates)	5,557
Number of signatures found sufficient	11,389

Therefore, the petition as submitted has been found to be sufficient.
Witness my hand and official seal this 27th day of July, 2009.



Barbara Riegel Wayne City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL ELECTION ON TUESDAY, DECEMBER 8, 2009, FOR THE SUBMISSION OF THE QUESTION OF THE RECALL OF A MEMBER OF THE CITY COUNCIL AND THE ELECTION OF A CANDIDATE TO FILL THE VACANCY IF THE RECALL PREVAILS.

WHEREAS, under the provisions of the law relating to cities in the State of California, a recall petition was filed demanding the recall of Councilmember Jerome M. Kern; and

WHEREAS, the petition was signed by more than 15 percent of the voters of the City of Oceanside; and

WHEREAS, a candidate shall be elected to fill the vacancy if this recall prevails; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed recall to the voters.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Oceanside, California, on Tuesday, December 8, 2009, a Special Municipal Election for the purpose of submitting the question of the recall of Councilmember Jerome M. Kern, and the election of a candidate to fill the vacancy, if the recall prevails.

SECTION 2. That on the ballot to be used at the election, in addition to any other matters required by law, there shall be printed substantially the following:

Shall Jerome M. Kern be recalled (removed) from the office of Member of the City Council?	YES	
	NO	
<p>For Member of the City Council to succeed Jerome M. Kern if he is recalled (Term Ending November, 2010)</p> <p style="text-align: right;">Vote for ONE</p>		

1 SECTION 3. That the ballots to be used at the election shall be in form and content as
2 required by law.

3 SECTION 4. That the City Clerk is authorized, instructed and directed to procure and
4 furnish any and all official ballots, notices, printed matter and all supplies, equipment and
5 paraphernalia that may be necessary in order to properly and lawfully conduct the election.

6 SECTION 5. That the polls shall be open at seven o'clock a.m. of the day of the election
7 and shall remain open continuously from that time until eight o'clock p.m. of the same day
8 when the polls shall be closed, pursuant to Election Code Section 10242, except as provided in
9 Section 14401 of the Elections Code of the State of California.

10 SECTION 6. That in all particulars not recited in this resolution, the election shall be
11 held and conducted as provided by law for holding municipal elections.

12 SECTION 7. That notice of the time and place of holding the election is given and the
13 City Clerk is authorized, instructed and directed to give further or additional notice of the
14 election, in time, form and manner as required by law.

15 PASSED, APPROVED AND ADOPTED by the City Council of the City of Oceanside,
16 California, this ____ day of _____, 2009, by the following vote:

- 17 AYES:
- 18 NAYS:
- 19 ABSENT:
- 20 ABSTAIN:

22 MAYOR OF THE CITY OF OCEANSIDE

24 APPROVED AS TO FORM:
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26 CITY ATTORNEY

24 ATTEST:

26 CITY CLERK

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO TO RENDER SPECIFIED SERVICES TO THE CITY RELATING TO THE CONDUCT OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY, DECEMBER 8, 2009.

WHEREAS, a Special Municipal Election is to be held in the City of Oceanside, California, on Tuesday, December 8, 2009, for the purpose of recall of one Councilmember; and if the recall prevails to elect a candidate to fill the unexpired term ending November 2010; and

WHEREAS, in the course of the conduct of the election, it is necessary for the City to request services of the County;

NOW, THEREFORE, the City Council of the City of Oceanside DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the provisions of Section 10002 of the Elections Code of the State of California, this City Council requests the San Diego County Board of Supervisors to permit the Registrar of Voters to prepare and furnish the computer record of the name and address of all eligible registered voters in the City; and will make available to the City additional election equipment, assistance, and services according to state law.

SECTION 2. That the City shall reimburse the County for services performed when the work is completed and upon presentation to the City of a properly approved bill.

SECTION 3. That the City Clerk is directed to forward without delay, to the Board of Supervisors and to the Registrar of Voters, each a certified copy of this resolution.

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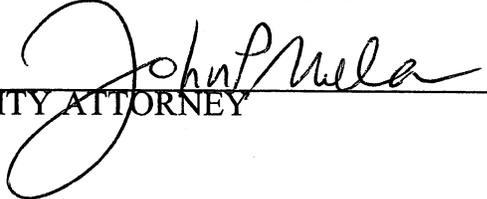
1 PASSED, APPROVED AND ADOPTED on this ____ day of _____, 2009, by
2 the following vote:

- 3 AYES:
4 NAYS:
5 ABSENT:
6 ABSTAIN:
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9 MAYOR OF THE CITY OF OCEANSIDE

10 APPROVED AS TO FORM:

ATTEST:

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12 CITY ATTORNEY

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26 CITY CLERK

27 Resolution requesting Board of Supervisors to render services for Special Municipal Election
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1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
3 OCEANSIDE, CALIFORNIA, ADOPTING REGULATIONS FOR
4 CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO
5 MATERIALS SUBMITTED TO THE ELECTORATE AND THE
6 COSTS THEREOF FOR THE SPECIAL MUNICIPAL ELECTION
7 TO BE HELD IN THE CITY ON TUESDAY, DECEMBER 8,
8 2009.

9 WHEREAS, Section 13307 of the Elections Code of the State of California provides that
10 the governing body of any local agency adopt regulations pertaining to materials prepared by
11 any candidate for a municipal election, including costs of the candidates statement;

12 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OCEANSIDE, DOES
13 HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

14 SECTION 1. GENERAL PROVISIONS. That pursuant to the provisions of Section
15 13307 of the Elections Code of the State of California, each candidate for elective office to be
16 voted for at the Special Municipal Election to be held in the City of Oceanside on Tuesday,
17 December 8, 2009 may prepare a candidate's statement on an appropriate form provided by the
18 City Clerk. The statement may include the name, age and occupation of the candidate and a
19 brief description of no more than 200 words of the candidate's education and qualifications
20 expressed by the candidate himself or herself. The statement shall not include party affiliation
21 of the candidate, nor membership or activity in partisan political organizations. The statement
22 shall be filed in the office of the City Clerk at the time the candidate's nomination papers are
23 filed. The statement may be withdrawn, but not changed, during the period for filing
24 nomination papers and until 5:00 p.m. of the next working day after the close of the nomination
25 period.

26 SECTION 2. FOREIGN LANGUAGE POLICY. Pursuant to the Voting Rights Act of
27 1965 (as amended), the City is required to translate candidate statements into the Spanish,
28 Tagalog and Vietnamese languages. Therefore, the City Clerk shall have all candidate
statements translated and printed in the Spanish, Tagalog and Vietnamese languages, as
specified above.

1 SECTION 3. PAYMENT. The candidate shall be required to pay for the cost of printing
2 the candidates statement in English and for the cost of translating and printing the candidate
3 statements in Spanish, Tagalog and Vietnamese.

4 The City Clerk shall estimate the total cost of printing, handling, translating, and mailing
5 the candidate's statements filed pursuant to this section, including costs incurred as a result of
6 complying with the Voting Rights Act of 1965 (as amended), and require each candidate filing
7 a statement to pay in advance to the City of Oceanside his or her estimated pro rata share as a
8 condition of having his or her statement included in the voter's pamphlet. This estimate is an
9 approximation of the actual cost that varies from one election to another election and may be
10 significantly more or less than the estimate, depending on the actual number of candidates
11 filing statements. Accordingly, the City Clerk is not bound by the estimate and may on a pro
12 rata basis, bill the candidate for additional actual expense or refund any excess paid depending
13 on the final actual cost. In the event of underpayment, the City Clerk may require the candidate
14 to pay the balance of the cost incurred. In the event of overpayment, the City Clerk shall
15 prorate the excess amount among the candidates and refund the excess amount paid within
16 thirty (30) days of the election or as soon as the final amount is known from the Registrar of
17 Voters.

18 SECTION 4. PAYMENT. The City Clerk estimates the total cost of printing, handling,
19 and mailing the candidate statements filed pursuant to the Elections Code to be Six Hundred
20 (\$600.00) Dollars. Each candidate who files a candidate statement shall pay in advance Six
21 Hundred (\$600.00) Dollars as a condition of having his or her statement included in the voter's
22 pamphlet.

23 SECTION 5. ADDITIONAL MATERIALS. No candidate will be permitted to include
24 additional materials in the sample ballot package.

25 SECTION 6. That the City Clerk shall provide each candidate or the candidate's
26 representative a copy of this Resolution at the time nominating papers are issued.

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1 SECTION 7. That all previous resolutions establishing council policy on payment for
2 candidates statements are repealed.

3 PASSED, APPROVED AND ADOPTED on this ____ day of _____, 2009, by
4 the following vote:

5 AYES:

6 NAYS:

7 ABSENT:

8 ABSTAIN:

10 MAYOR OF THE CITY OF OCEANSIDE

12 APPROVED AS TO FORM:

12 ATTEST:

13 
14 CITY ATTORNEY

14 CITY CLERK