

# CITY OF OAKLAND

## Office of the City Attorney

### Public Legal Opinion

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OAKLAND  
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TO: LATONDA SIMMONS, CITY CLERK  
FROM: BARBARA J. PARKER  
CITY ATTORNEY  
DATE: DECEMBER 19, 2011  
RE: LEGAL IMPLICATIONS OF TWO RECALL PETITIONS

#### I. Introduction

On December 7, 2011, the Oakland City Clerk found that a proposed petition submitted by Gene Hazzard to recall Mayor Jean Quan met the form and wording requirements of the California Elections Code. Coincidentally that same day, another group of proponents filed a Notice of Intent to Recall Mayor Jean Quan. The Notice of Intent initiated the process to qualify a *second* petition to recall the Mayor.

The City Clerk has asked whether two petitions could be circulated at the same time for the same office; she also has referred to this Office the media's questions on this topic.

#### II. Questions Presented

- A. Can more than one petition<sup>1</sup> for recall of the same officer be circulated at the same time?
- B. If more than one petition is being circulated, which petition will have effect?

#### III. Summary Conclusion

- A. Yes.
- B. The first petition that the City Clerk certifies is the only effective petition.

<sup>1</sup> A single "petition" consists of all the "sections", which contain the signatures of individuals signing the recall petition. The "sections" contain the pages of the petition. (Elections Code section 11222.)

#### IV. Analysis

##### A. More Than One Petition For Recall Can Be Circulated At The Same Time

The City Charter generally provides that the recall of elected officials will be exercised in the manner prescribed by general state law. (City Charter Section 1104.<sup>2</sup>) The California Elections Code limits when a recall can occur. However, nothing in the code prohibits the circulation of two or more petitions to recall a single officer under the facts presented here. Elections Code section 11007 prohibits circulation of a second recall petition if a recall election has occurred in the prior 12 months and if the official prevailed in the election:

[P]roceedings may not be commenced against an officer of a city . . . in the event of one or more of any of the following:

...  
(b) A recall election has been determined in his or her favor within the last six months.

This limitation does not apply to the Mayor's recall efforts because there has not been a recall election within the last six months. No provision of the California Elections Code prohibits the circulation of two petitions. Indeed, the Supreme Court has long permitted the circulation of two petitions.

The California Supreme Court, in a decision reviewing the validity of a second recall petition for the same water board official, assumed the validity of the second petition. In *Morrow v. Board of Directors of Imperial Irr. Dist.*, 219 Cal. 246, 248, 26 P.2d 292 (1933), the California Supreme Court ruled that an elections official could act on a second petition when the first petition was tied up in legal proceedings. The court asserted "[t]he fact that two valid petitions may be on file at the same time does not warrant a refusal to act if either of them is sufficiently certified." The California Supreme Court case *Wahl v. Waters*, citing *Morrow*, agreed. "The act does not prohibit an elector from signing more than one petition . . . ." (11 Cal.2d 81, 86 (1938).)

In sum, the law does not prohibit the circulation of two petitions at the same time to recall the same officer.

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<sup>2</sup> Section 1104 of the Oakland City Charter provides:

The People of the City reserve to themselves the powers of initiative and referendum and the recall of elected officials, to be exercised in the manner prescribed by general law of the State.

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**B. If More Than One Petition Is Being Circulated, Only The First Petition Certified By The Elections Official Will Have Effect**

The *Morrow* case also gives guidance if both petitions obtain the requisite number of signatures. The court found in *Morrow* that though one petition was tied up in legal proceedings over its sufficiency, a second petition could be certified and trigger an election. (210 Cal. at 248.)

The [second] petition and certificate involved in the instant proceeding are sufficient and hence no justification can be found for the failure of the board to act thereon and proceed to call the special election. The fact that two valid petitions may be on file at the same time does not warrant a refusal to act if either of them is sufficiently certified. When the election is called under one petition, any other petition for the same purpose then on file or in existence becomes functus officio. (*Id.*)

According to *Morrow*, once an election is called under one petition, the other petition becomes "functus officio," or without further authority or legal competence because the purpose of the petition have been fully accomplished.

**V. CONCLUSION**

Two recall petitions against the same officer may be circulated at the same time. The petition that is certified first is the only effective petition.

Respectfully submitted,



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Barbara J. Parker  
City Attorney

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