

Submitted by staff
at 9/17/12 meeting.
Item 14

MEMORANDUM

TO: MPWMD Board of Directors
FROM: David J. Stoldt, General Manager
DATE: September 17, 2012
SUBJECT: Alternative Actions for Referendum Petition

SUMMARY: On August 30, 2012 the Registrar of voters verified a sufficient number of signatures on the petition for referendum against Section 4 of Ordinance 152 that was delivered to the District July 26th. There were nominally 4,810 signatures of which 4,136 were found "sufficient." 3,824 are needed to qualify the petition. As such, the Board must take action as described below.

RECOMMENDATION: The Board has the following options:

- 1) Although the petition only addressed Section 4 of Ordinance 152, the Board could reconsider and repeal the entire ordinance. The Board would have the option to immediately start a new Proposition 218 process to establish a new fee;
- 2) Reconsider and repeal only Section 4 of the Ordinance and leave the rest of the Ordinance intact and determine that the remainder of the Ordinance is sufficient to continue to collect the charge;
- 3) Suspend the entire Ordinance and submit it to the voters for adoption at the next regularly scheduled election, or call a special election, no sooner than 88 days (Elections Code Sec. 9145). If the Board decides to call for an election, it must do so via a Resolution, which staff would place on a future Board agenda;
- 4) Suspend only Section 4 of the Ordinance and submit that section, only, to the voters for adoption at the next regularly scheduled election, or call a special election, no sooner than 88 days (Elections Code Sec. 9145); or
- 5) Determine, based on case law and legal opinions, that the petition is invalid because it is flawed and continue to collect the charge.

DISCUSSION: With respect to Option 5 above, at least five legal theories support the conclusion that the petition is invalid and include the following:

- a) The power of referendum does not extend to statutes or laws providing for appropriations for usual current expenses.
- b) Proposition 218 allows initiatives, but not referenda, to reduce or repeal local taxes,

assessments, fees and charges.

- c) The petition did not provide sufficient information for the signer to understand the impacts of repeal or failure to succeed at an election and make an informed judgment; It did not present to the voters who signed it the entire text intended to be invalidated by the proposed referendum.
- d) The petition refers to specific portions of the Ordinance that were not included but are logically intertwined with the Section 4 that is the subject of the petition. and
- e) The letter which accompanied the petition in the direct mail piece appears to violate the Elections Code.

In many venues, those who initiate a petition will often present a draft version of the petition to the elections officer to review as to form, so that obvious errors can be identified before the process begins. It does not appear that the proponents communicated with the Monterey County Registrar of Voters before they began to circulate.

If the Board elects to invalidate the petition, then it should immediately direct staff to proceed with its proposed Citizen's Oversight Panel, the first step of which is to call for candidates interested in serving. A list of candidates for appointment could be brought back to the October Board meeting.