

11/6/07
S32A

Novak, Susan

From: Mainero, Mario
Sent: Friday, November 02, 2007 2:48 PM
To: de Mayo, Benjamin; Novak, Susan
Cc: Do, Andrew; McCusker, Justin; Norby, Eric; Petteruto, Matt
Subject: Item S32A
Attachments: Draft Ordinance on removal of County officers.doc

Hi, Ben and Susan:

We have added one additional section to our proposed Charter Amendment in response to some concerns that have been raised regarding its applicability to education officials (which was not intended), in that there is some ambiguity in the law regarding whether they are "County officers," which was not intended. The attachment is thus the language the Supervisor is proposing for Tuesday.

Mario

Mario Mainero
Chief of Staff
Supervisor John M.W. Moorlach
(714) 834-7661

S32A



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MEMORANDUM

**SUPERVISOR JOHN M.W. MOORLACH
ORANGE COUNTY BOARD OF SUPERVISORS, SECOND DISTRICT**

10 Civic Center Plaza, 5th Floor, Santa Ana, California 92701

714.834.3220

Date: October 31, 2007
To: Darlene Bloom, Clerk of the Board
From: John Moorlach, Vice Chairman
Re: Addition to (11-06-07) Meeting (Supplemental)

John Moorlach
by [Signature]
cos

REQUEST AND SUMMARY:

Please place on the agenda the attached proposed County Charter Amendment for placement on the February 2008 ballot. It would, if approved by the voters, allow the Board of Supervisors to remove, by a 4/5 vote of all its members, any County elected officer, other than another supervisor, for cause, which is specifically defined by certain forms of malfeasance in office. Currently, as recent events have demonstrated, the Board of Supervisors has little or no authority to remove an elected County officer who has committed malfeasance in office.

Article XI, section 4(c) of the California constitution provides that a county charter may provide for the election or appointment, and removal, of county officers, including state constitutional officers such as the sheriff. A nearly identical charter provision, passed by the County of San Bernardino, was upheld by the Fourth District Court of Appeal just two years ago in *Penrod v. County of San Bernardino*, 126 Cal. App. 4th 185, 23 Cal. Rptr. 3d 717 (2005). There, the County Sheriff argued that state constitutional officers such as the Sheriff could not be constitutionally removed by the Board of Supervisors, but the Court specifically held that such a removal power was constitutional.

RECOMMENDED ACTIONS:

1. Direct the Registrar of Voters to place the proposed Charter Amendment on the ballot for the election to be held February 5, 2008.
2. Direct the County Counsel to prepare the ballot title and summary and the impartial analysis of the ordinance, and to forward them to the Registrar of Voters.

Approved to place on the agenda:

Chris Norby

Supervisor Chris Norby, Chairman

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA
AMENDING THE COUNTY CHARTER TO PROVIDE FOR
REMOVAL OF COUNTY ELECTED OFFICERS**

The Board of Supervisors of the County of Orange ordains as follows:

Upon adoption by the voters of the County of Orange, the following shall be added to the Charter of the County of Orange:

Article III. REMOVAL OF ELECTED COUNTY OFFICERS

Section 301. Any elected County officer other than supervisor may be removed from office in the manner provided by law; also any such officer may be removed by a four-fifths (4/5) vote of all members of the Board of Supervisors, for cause, after first serving upon such officer a written statement of alleged grounds for such removal, and giving him a reasonable opportunity to be heard in the way of explanation or defense.

Section 302. For the purposes of Section 301, "cause" shall include: (1) flagrant or repeated neglect of duties; (2) misappropriation of public property; (3) violation of any law related to the performance of an official's duties; (4) willful falsification of an official statement or document.

Section 303. Sections 301 and 302 herein shall not be applied to in any way interfere with the independent and constitutionally and statutorily designated investigative and prosecutorial functions of any elected County officer.