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As San Diego mayor heads for therapy, city faces big mess

Confusion is mounting about correct city procedures as San Diego Mayor Bob Filner is about to undergo counseling after accusations of inappropriate behavior toward women

San Diego Mayor Bob Filner – faced with a sexual harassment lawsuit filed by his former communications director – is not only embarrassing his city, but is also presenting it with confusing legal choices, political and legal analysts say.

He has agreed to undergo two weeks of counseling as seven other women have come forward to accuse him of inappropriate behavior. The therapy is to take place Aug. 5-19, during which the mayor has said he will receive twice-a-day briefings about city operations.

But seven of the nine city council members say he should resign. California Sen. Dianne Feinstein (D), House minority leader Nancy Pelosi, and Democratic National Committee chair Debbie Wasserman Schultz have also indicated as much.

In addition, two potential recall efforts are afoot. One recall group filed an affidavit Monday indicating its plans, and another published an ad over the weekend indicating similar intentions.

It's all adding up to a confusing situation, and questions are multiplying by the moment. Among the questions:

- Who is in control of the city while the mayor is in rehab?
- Can two recalls go on at the same time?
- Are the city's recall measures at odds with those of California?
- Who will pay Filner's legal fees?

"The City Council and other civic leaders throughout the city are responding to the politics of the situation and the outrage that stretches far beyond the region's borders," says David McCuan, a political scientist at Sonoma State University in Rohnert Park, Calif., in an e-mail. "Citizens, comedians, state and national leaders – everyone has the same message for the Mayor: get out and get help. Yet, the Mayor is hunkering down and preserving all his legal options. This sets up a monumental battle through a recall effort and if there is more than one effort, the Mayor could potentially survive."

Filner declared Monday that he thinks the city should pay his legal fees, and the city council rejected that in a late Tuesday vote. The council also voted unanimously to indemnify itself against all damages and legal fees it might incur as a result of the lawsuit.

"If Bob Filner engaged in unlawful conduct and the city is held liable, he will have to reimburse us every penny the city pays and its attorney fees," City Attorney Jan Goldsmith said.

In a statement, Councilmember Kevin Faulconer said: "Bob Filner can't pay back San Diegans for the damage he's done to our city's reputation."

Another figure who says Filner should resign is city council president Todd Gloria, who would become acting mayor in the event of a resignation.

“I applaud his action to seek help, but it only underscores what a lot of us are saying, which is you cannot seek help and run the city at the same time,” Mr. Gloria said in an interview with KPBS TV. “That’s why myself and so many others have said, Mayor, you need to resign.”

Technically, during therapy, the mayor will keep his full authority – signing legislation, if needed, and overseeing parks, roads, libraries, and city services, according to Mr. Goldsmith.

But when Gloria was asked what the chain of command is when Filner goes to therapy, he replied, “Well, it’s kind of unclear. Nothing speaks to a mayor that’s incapacitated.... We don’t really have rules that discuss that. So as a practical matter, it’s almost like he’s on vacation and in that case, we’ll limp by for a couple of weeks. But most of us don’t think that two weeks is sufficient to solve the problem.”

Confusion has also arisen over what to do if there are two recall efforts simultaneously. San Diego’s municipal code seems to say that an official can be recalled only if no other petition has been filed within the past six months.

“There are those who think that the second of these [recall efforts] was really an attempt to protect Filner by confusing people and diffusing the ability to get enough signatures,” says Barbara O’Connor, director emeritus of the Institute for the Study of Politics and Media at California State University, Sacramento. To qualify, a campaign must gather 101,597 signatures, which is not easy, Ms. O’Connor and others say.

The city’s current wording in the municipal code about a recall, Councilmember Mark Kersey says, runs afoul of the federal courts, which struck down a near-identical law in 2003. That’s when the state recalled then-Gov. Gray Davis. A federal district court ruled against wording that held that voters must vote on the recall before they can cast their ballot for a successor. It was found to violate the free-speech clause in the First Amendment.

“San Diegans can only vote on a possible successor if they have also voted on whether the person who is currently in the post should be ousted from office,” says Josh Spivak, senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College in New York and founder of the Recall Elections Blog. “That is unlikely to survive a challenge in court.”

The eighth woman to go public with allegations came forth Tuesday. She is Lisa Curtin, director of government and military education at San Diego City College. She told KPBS that Filner made unwanted advances to her during a meeting in 2011, when he was a Democratic member of Congress.

The situation involving Filner has been exacerbated, O’Connor and others say, by the fact that two New York candidates are running for office despite sex scandals – Anthony Weiner and Eliot Spitzer.

“There is a bit of forgiveness fatigue here,” O’Connor says. “It’s really a mess.”

“The Mayor has little to rally, dwindling support, and runs the risk of making San Diego the laughingstock of American municipal politics as Stockton [Calif.] and Detroit both face bankruptcy and New York dances with politicians whose time has also passed,” says Mr. McCuan. “It seems that there is a generation of politicians who don’t know when to pull out of a political race.... Bob Filner is becoming the Poster Child for insolence and not governance.”a