

SECOND READING - CONTINUED FROM 10/24/2023



OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296
Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA R. ZIEGLER
COUNTY COUNSEL

Agenda # _____ October 24, 2023

October 17, 2023

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

SUBJECT: ADOPT AN ORDINANCE AND RESOLUTION TO AMEND SECTION 62 OF THE COUNTY OF ALAMEDA CHARTER AND CALL A SPECIAL ELECTION TO BE CONSOLIDATED WITH THE MARCH 5, 2024, PRIMARY ELECTION, FOR THE PURPOSE OF SUBMITTING THE PROPOSED AMENDMENT TO THE VOTERS FOR APPROVAL

Dear Board Members:

RECOMMENDATION:

- A. Adopt an Ordinance calling for a special election to be consolidated with the statewide election to be held on March 5, 2024, for the purpose of submitting a measure to the voters of the County of Alameda ("County") on the question of whether the Charter of the County should be amended by replacing the language of County Charter Section 62, in its entirety, with "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers."
- B. Adopt a resolution and order calling for and giving notice of a special election to be consolidated with the statewide election to be held on March 5, 2024, to amend County of Alameda Charter Section 62, by replacing the language of County Charter Section 62, in its entirety, with "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers."

SUMMARY:

Section 23720 of the Government Code provides that the County Charter may be amended by a proposal submitted either by the governing body or by a petition signed by 10% of the qualified electorate within the County. The proposed ordinance and resolution would call for a special election to be held on March 5, 2024, consolidated with the statewide Primary Election, for the purpose of submitting to the voters of the County the question of whether the County Charter should be amended.

DISCUSSION:

The County of Alameda is a charter county. Generally, a county's charter supersedes state law, and a county is bound to follow its charter where the two conflict. The voters of a charter county must authorize any amendment to a county charter. A Board of Supervisors lacks the authority to amend a charter absent voter approval. This action seeks to perfect amendments to Section 62 of the County of Alameda Charter by authorizing an election to obtain voter approval of proposed amendments, for the reasons explained in detail below.

Section 62 of the County's Charter prescribes the procedure to recall a County officer. A thorough review of Section 62 of the Charter reveals that Section 62, for all intents and purposes, is out of date. It is out of alignment with the recall procedures found in state law and found in all other charter counties in the state. And, significantly, due to the growth of the County over many decades, and the changes to election law, including changes to the manner in which elections are conducted, it is likely unfeasible to carry out a recall election in the manner outlined in the charter.

In order to provide the public and the Registrar of Voters with clear and achievable standards for conducting a recall, it is recommended that your Board adopt an ordinance to amend the Charter by replacing the County's current recall procedures with the recall procedures prescribed in state law and to call for the necessary special election to perfect the amendments. Amending Section 62 to adopt state law procedures for recalling county officers will bring clarity to all regarding the procedures, timing, and rules that will apply to recalls of County of Alameda officers. This change will codify a transparent recall process, and benefit the public generally, proponents of any recall, a target of a recall, and opponents of a recall, by substantially reducing the likelihood of costly litigation that could arise due to the current outdated standards.

PROBLEMS WITH SECTION 62 OF THE CHARTER:

Unconstitutional Provisions. Courts have held that *at least two* provisions of Section 62 are unconstitutional when applied to other types of elections. These rulings create uncertainty as to whether these provisions should, or can, be followed when conducting a recall election.

- Section 62 requires petition circulators to be registered voters of the County. The U.S. Supreme Court has held that a similar requirement for circulating initiative petitions was unconstitutional. State law requires only that a petition circulator be 18 years of age or older. The proposed amendment to follow state law would substantially lessen the risk that any recall election would be subject to legal challenge on the grounds that the procedures followed were unconstitutional.

- Section 62 requires that “no vote shall be counted for any candidate for said office unless the voter also voted on the question of the recall of the person sought to be recalled” This language was also held to be unconstitutional. In striking the language, the court allowed voters who skipped the recall question to vote on a candidate. Adopting state law eliminates the risk that the form of ballot prescribed by Section 62 would subject a recall election to legal challenge as unconstitutional. Under state law, the question of the recall is presented to the voters without any candidates appearing on the ballot. If a majority of voters vote for the recall, the officer is recalled, and a vacancy is created. Candidates need not mount a campaign without knowing whether the officer has been recalled.

Missing Procedures. Section 62 is silent on key procedures for a recall. A recall generally has three broad stages: (1) the time before circulating a petition; (2) the gathering and verification of the signatures; and (3) the recall election (if enough valid signatures are gathered). Section 62 is completely silent on the pre-circulation procedures.

- The pre-circulation procedures in state law provide important transparency measures as a practical matter. They provide notice to the public, identify the target of the recall, allow the target to answer the petition, give the elections official the opportunity to vet the form of the petition, and allow the public time to challenge the form and content of the petition. These steps and this level of transparency may serve to reduce the likelihood of post-election legal challenges. State law fills in these pieces that are missing from the Charter and provides consistent practices to follow.
- Section 62 has none of these pre-circulation procedures. It starts with a “petition demanding the election or appointment of a successor to the person sought to be recalled shall be filed with the County Clerk [the Registrar of Voters], which petition shall be signed by [the required number of electors].” In other words, Section 62 begins at the verification stage. There is no notice to the public or the target of the recall, no service of notice, no answer by the recall target, no vetting of the proposed petition by the elections official, no publication, and no prescribed opportunity or timeline to challenge the proposed petition. This means there are no prescribed safeguards and checks and balances that may resolve defects in the process *before* an election has occurred.
- The proposed amendment to adopt state law ensures that the rules and procedures for all stages of the recall may be known to (1) the public, (2) proponents of any recall, (3) the target of any recall, and (4) opponents of a

recall. State law increases transparency by ensuring all relevant stakeholders know that a recall effort is underway.

Unfeasibility. Section 62's recall procedures may not be feasible because election law has evolved over the many decades since Section 62 was adopted.

- Section 62 requires that nominees to replace a recalled officer be placed on the same ballot as the recall and cites to "Section 1188 of the Political Code" to define the process for nominees to qualify for the ballot. But Section 1188 is a state law that no longer exists. This leaves a gap in the recall procedures and no direction for qualifying nominees. State law does not allow nominees for local offices to be placed on the same ballot as the recall election. Instead, if the recall passes, it creates a vacancy for that office. The vacancy may be filled by the rules governing the local jurisdiction. Adopting state law will provide procedural clarity, transparency for all, and close the gap.
- Section 62 specifies a turnaround time for the Registrar of Voters to verify petition signatures that is impractical and likely unattainable for a jurisdiction that, in the decades following Section 62's adoption, has grown to the size of Alameda County today—approximately 1.65 million people. Section 62 could lead to proponents of a recall gathering tens of thousands of signatures, possibly over 100,000, to qualify a recall for the ballot. But it only allows the elections official 10 days to verify sufficient signatures. The elections official is highly unlikely to verify the signatures needed within the 10-day deadline. The failure to verify signatures timely could lead to costly litigation. State law allows 30 days. Adopting state law's longer timeframe may avoid costly pre- or post-election litigation because it provides the Registrar of Voters more time to complete the verification process.
- Section 62 requires the election to take place within 35 to 40 days of the Board of Supervisors calling the election. As a practical matter, it is likely not possible to prepare, print, translate, and mail ballots to the over 900,000 registered voters of the County within 35-40 days, while at the same time hiring and training staff, and standing up vote centers for in person voting. The quick turnaround may also conflict with the timelines mandated by the Elections Code for such things as mailing and sending the voter information guide and overseas and military ballots, election requirements that the Registrar of Voters currently follows. Adopting state law would provide the Registrar of Voters not less than 88 days and in certain instances as many as 180 days to conduct the election. Adopting the state law timelines provides a more reasonable and doable timeframe to ensure that any recall election could be executed within the timelines provided by law and substantially reduces the risk of litigation over unmet timelines.

- Adopting state law will automatically conform the recall procedures and timelines with those of the Elections Code (and of other counties, see below). Moreover, as the California Legislature updates and amends state law, those updates and amendments will automatically apply in Alameda County. In other words, by incorporating state law, any future changes will be applicable to County recalls, and reduce the potential for costly Charter amendment updates and reduce the risk of the Charter, again, falling out of date with the times and growth of the County.

Other Charter Counties. There are 14 charter counties in California. Three of these counties' charters do not include recall provisions, which means state law automatically governs recalls in those counties. The remainder refer to and incorporate state law to govern their recalls. The County of Alameda is the only charter county with recall provisions that completely deviate from (and are at odds with) the state law and current constitutional law. Adopting this amendment will align the County of Alameda with all other charter counties and non-charter counties in the state regarding the key steps for conducting a recall election.

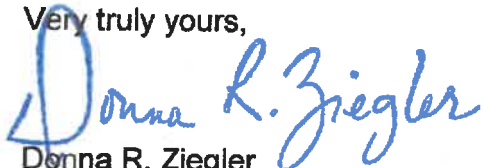
FINANCING:

The net County cost for placing the measure on the ballot is not known at this time, and will be determined, in part, upon any future jurisdictional consolidation. No additional appropriations are required, and we anticipate funds will be available in the FY 2023-24 Approved Budget to cover the costs resulting from the recommendation.

VISION 2026 GOAL:

The proposed Charter amendment supports the goal of Accessible Infrastructure by updating applicable recall procedures to modern day standards. It eliminates decades old procedures that, 1) do not integrate well with the way elections are conducted today, and 2) that are a detriment to ensuring that lawful, competent, and timely recalls may be conducted.

Very truly yours,



Donna R. Ziegler
County Counsel

cc: County Administrator
Registrar of Voters

SECOND READING - CONTINUED FROM 10/24/2023

ORDINANCE NO.

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

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

SECTION I – Call of the Election and Purpose

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda ("Registrar of Voters") is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

SECTION II – Form of Measure

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers”?	YES
	NO

A copy of the full text of County of Alameda Measure ____ is attached hereto and incorporated herein.

SECTION III

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this ____ day of October 2023; by the following called vote:


AYES:

NOES:

EXCUSED:

Approved as to Form

DONNA B. ZIEGLER, County Counsel

By 

Print Name RAYMOND LARA

Full text of County of Alameda Measure __

MEASURE _____

This Measure ___ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714, 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers.

RESOLUTION NO. R-2023-___

A RESOLUTION AND ORDER OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, APPROVING AN ORDINANCE AND CALLING FOR AND GIVING NOTICE OF A SPECIAL ELECTION AND PLACING A MEASURE ON THE BALLOT TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF ALAMEDA COUNTY TO AMEND COUNTY CHARTER SECTION 62 GOVERNING RECALL OF COUNTY OFFICERS; AND CONSOLIDATING THE ELECTION WITH OTHER ELECTIONS ON MARCH 5, 2024; FIXING THE DATE AND MANNER OF THE ELECTION AND THE PROCEDURE FOR VOTING THEREIN

WHEREAS, the County of Alameda ("County") is a charter county;

WHEREAS, California State Constitution, Article XI, Section 4, paragraph (c) allows a county charter to provide for the election and removal of elected and appointed County officers;

WHEREAS, Section 62 of the County Charter governs the recall of County officers;

WHEREAS, certain provisions of Section 62 of the County Charter are outdated, reference state law provisions that are no longer in effect, have been declared unconstitutional in other contexts, are silent on several key procedures for recall as outlined in state law, and may not be feasible to execute;

WHEREAS, other charter counties throughout the state have adopted state law to apply to the recall of their county officers;

WHEREAS, the Board of Supervisors ("Board") cannot change or amend the County Charter without voter approval;

WHEREAS, the Board has determined that it is in the County's best interest to adopt state law to govern the recall of County elected and appointed officers;

WHEREAS, adopting state law will provide greater transparency regarding applicable recall procedures for the public generally, proponents of any recall, opponents of any recall, and any target of a recall;

WHEREAS, adopting state law will align the County's recall procedures with the other counties in California and create achievable standards for conducting recalls;

NOW, THEREFORE, THIS BOARD OF SUPERVISORS HEREBY RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Call of the Election and Purpose. A special election shall be held and the same is hereby called and ordered to be held throughout the County on the 5th day of March 2024, for the purpose of submitting to the voters of the County by ordinance the question of whether Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers shall be amended to adopt state law for the recall

of County officers as provided in the attached ordinance, Attachment A (hereinafter "Ordinance").

Section 3. Ordinance. The attached Ordinance calling for the election to amend Section 62 of the County Charter is incorporated herein by reference.

Section 4. Ballot Measure. The Board orders that the measure to amend the County Charter by ordinance shall appear on the ballot substantially as follows:

BALLOT QUESTION: CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers"?

Yes ___ No ___

Section 5. Consolidation. The Board hereby submits the ballot question and the measure to the qualified electors of the County at the Election in the form set forth above. The special election called by this resolution shall be consolidated with the other elections conducted by the Registrar of Voters to be held in the County on March 5, 2024, and the ordinance amending the County Charter shall be placed on the same ballot as that provided for the general election. The Consolidated Election shall be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. The votes received and canvassed, and the results ascertained and determined all in the same manner as the statewide election to be held on that date and in conformity with the election laws of the State of California. Only qualified electors of the County may vote on the measure.

Section 6. Election Procedure. All qualified voters residing in the County shall be permitted to vote in the election and in all particulars not recited in this resolution, the elections shall be held as nearly as practicable in conformity with the Elections Code of the State of California. The votes cast for and against the measure shall be separately counted and if the measure receives a majority of the votes cast by the qualified electors voting on the measure, the measure amending the County Charter shall be effective pursuant to sections 23713, 23714 and 23724 of the Government Code. Should another proposed measure with conflicting provisions appear on the same ballot, and each proposed measure receives a majority of votes, the proposed measure with the highest number of affirmative votes shall prevail, in conformity with section 9123 of the Elections Code.

Section 7. Authority. This resolution is adopted pursuant to sections 10403 and 12001 of the Elections Code and section 25201 of the Government Code. The Clerk of the Board of Supervisors is ordered to file a copy of this resolution with the Registrar of Voters at least eighty-eight (88) days prior to the day of the election. The Registrar of Voters is authorized, instructed, and directed to prepare any documents and take any additional actions that may be necessary in order to properly and lawfully conduct the election.

Section 8. The Clerk of the Board is directed to file a certified copy of this Resolution with the Registrar of Voters and the Registrar of Voters is authorized and directed to take all steps necessary to place the Ordinance on the ballot and to cause the Ordinance to be

printed in the sample ballot. A copy of the Ordinance shall be made available to any voter upon request.

Section 9. Proclamation. Pursuant to section 12001 of the Elections Code, the Board hereby PROCLAIMS that a special Countywide election shall be held on Tuesday, March 5, 2024, to vote upon the Charter Amendment described in the Ordinance.

Section 10. This Resolution and Order relating to an election shall take effect immediately.

Section 11. Preparation of the Ballot Argument. The provisions of Section 9160 et seq. of the California Elections Code, relating to arguments concerning county measures, shall apply to the measure submitted at the election. The President of the Board, or any member or members of the Board as the President shall designate, are hereby authorized, but are not directed, to prepare and file with the Registrar of Voters a written argument in favor of the measure, which shall be considered the official ballot argument of the Board for the measure.

The foregoing Resolution and Order was passed and adopted by the Board of Supervisors of Alameda County, State of California on the ___ day of _____, 2023 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

President of the Board of Supervisors
County of Alameda, State of California

ATTEST:

ANIKA CAMPBELL-BELTON, Clerk
of the Board of Supervisors, County of Alameda

By: _____

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: 

Raymond Lara
Senior Deputy County Counsel

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

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

SECTION I – Call of the Election and Purpose

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda ("Registrar of Voters") is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

SECTION II – Form of Measure

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers"?	YES
	NO

A copy of the full text of County of Alameda Measure ____ is attached hereto and incorporated herein.

SECTION III

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this ____ day of October 2023, by the following called vote:

AYES:

NOES:

EXCUSED:

Full text of County of Alameda Measure __

MEASURE _____

This Measure ____ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714, 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected and appointed officers.