

**PROPOSED AMENDMENT TO COUNTY CHARTER PROVISIONS
REGARDING RECALL OF COUNTY OFFICERS**

FREQUENTLY ASKED QUESTIONS¹

1. What is a county charter?

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.

2. Does the current County Charter have local rules for the recall of County officers?

Yes, 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 A thorough review of Section 62 of the Charter reveals that Section 62, for all intents and purposes, is out of date.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.

3. Is the County proposing to amend the County Charter rules for the recall of County officers? What would change? And why change the rules now?

At the October 24 and October 31, 2023, regular meetings, a proposal was submitted to the Board of Supervisors to consider asking County voters to amend Section 62 of the Charter. The proposed amendment would make County recall procedures the same as the procedures in State law.

Now is the time to change the recall procedures because the County seeks to minimize, and ideally avoid, the potential for litigation should it be called upon to conduct a recall election and fail to comply with its Charter. The next scheduled election presents an opportunity to do so. The people of the County of Alameda deserve clear, constitutional, and achievable election procedures. As explained throughout this set of "Frequently Asked Questions", Section 62 falls short.

4. Which recall procedures will change if State law is followed instead of the Charter?

Adopting State law will accomplish a number of changes, for example:

¹ This set of "Frequently Asked Questions" ("FAQ") was prepared by and on behalf of the County of Alameda to answer questions regarding proposed amendments to Section 62 of the County Charter.

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It is the responsibility of the proponents of a recall effort and the recallee to obtain the most current information available, reflecting changes in the Charter, state law, or procedures subsequent to the publication of this FAQ. The County strongly recommends that any interested party obtain legal advice to assist in complying with applicable law.

- It will eliminate procedures in the Charter that may be unconstitutional, i.e., procedures defining who may circulate/collect signatures on a petition to call for a recall election.
- It will increase the number of days within which the Registrar of Voters (“Registrar” or “ROV”) must hold the recall election from the number prescribed 90+ years ago in the Charter to a more reasonably achievable timeline (that may actually be met). The County Charter requires the recall election to occur between 35 and 40 days after the Board of Supervisors calls the election, or 60 days for a consolidated election. This timeline does not account for the substantial increase in population or the manner in which elections are conducted today.

Specific information, regarding these and other changes, is detailed below.

5. Under the Charter, the Registrar is required to conduct a recall election 35-40 days after the Board of Supervisors calls for the recall election. Is the Registrar able to conduct a recall election on 35-40 days’ notice? How about on 60 days’ notice?

No. Legal standards for conducting elections, of any kind, have changed since 1926 when the Charter was adopted. The requirements imposed by law today make 35-40 days, or even 60 days, inadequate. For example, after the requisite number of signatures have been gathered and verified by the ROV, and the Board of Supervisors has called for the recall election, the following steps in the election process must occur:

- 88 days before the election, nominees to succeed a recalled officer must file nomination papers. (Elections Code section 8403.)
- 60 to 45 days before the election, the Registrar must mail overseas and military ballots. (Elections Code section 3105(b).)
- 29 days before the election, the ROV must begin mailing ballots to voters. (Elections Code section 3001.)
- 10 days before the election, the ROV must mail the voter guide. (Elections Code section 11324.)
- The public must be allowed 10 days to view and legally challenge election materials.

Two of those steps must occur before the Registrar is certain that there will be a recall election and before an election date can be set. Even if the recall election occurs 40 days from the meeting at which the Board of Supervisors calls the election, 11 days is not enough time to prepare, translate, print, and distribute ballots. The 10-day review period would really mean one day to prepare ballots. Even 30 days is not enough time to prepare, translate, print, and distribute the voter guide to all registered voters.

When the Charter was approved in 1926, the steps that the Registrar was required to take to conduct an election were significantly different. The population of the County was much smaller. The Charter itself was largely aligned with State law processes. In the nearly 100 years since the

Charter was approved, the legal requirements to conduct an election have changed dramatically, and the population of the County is much larger. It is simply not possible for the Registrar to comply with both State law and the Charter's existing requirement to conduct a recall election 35-40 days after the Board of Supervisors calls for the election.

6. Would the proposed amendment to Section 62 of the County Charter change the number of signatures required to be collected to qualify a recall of County officers for the ballot?

Yes. The number of signatures to qualify a recall petition for the ballot under the County Charter is at least 15% of the votes cast within the County for all candidates for the office of the Governor at the last election at which a governor was elected. The number required under State law is at least 10% of registered voters as of a specific date.

The number of signatures required to qualify a recall under the County Charter is currently 73,195. The number required under State law is approximately 92,341, as of the date of this FAQ. Under State law, the number of registered voters is calculated when the Registrar determines that the form of a recall petition meets the requirements of State law and is based on the last report of voter registration that the Registrar submitted to the Secretary of State.

7. Would the proposed amendment to Section 62 of the County Charter change which County officers can be recalled? Can appointed County officers be recalled now?

The amendment to the County Charter proposed at the October 24 and 31, 2023, meetings of the Board of Supervisors would not change which County officers can be recalled. Section 62 of the County Charter currently allows for recall of both "appointive" and "elective" officers. Section 15 of the Charter defines the "elective" officers. Section 17 of the Charter defines the "appointive" officers. If an appointive officer is recalled, the position becomes vacant and is not filled by an election.

State law allows for the recall only of elective officers. But, under the October 24 and 31, 2023, proposed amendment to Section 62 of the County Charter, the Charter would mandate that State law procedures for the recall of county officers would apply to both "County of Alameda elected and appointed officers." The change from "appointive" to "appointed" and "elective" to "elected" would have no legal effect. The change is intended only to make the text of the County Charter more accessible to modern readers. It is intended that if the Charter is amended as recommended, officials holding elective offices, as set forth in Section 15 of Charter, will remain subject to recall whether they were seated in the office by election or by appointment. The intent is also that officials seated in appointive positions as defined in Section 17 of the Charter will remain subject to recall, and the amendment establishes that the State law recall procedures will be applicable and govern the conduct of such a recall.

8. Why are there now two letters from County Counsel on the November 14, 2023, agenda proposing an amendment to Section 62 of the County Charter? How is the newly proposed amendment different than the proposed amendment to Section 62 that appeared on the October 24 and 31, 2023, agendas?

An *alternative proposal* to amend Section 62 of the County Charter will be presented for the first time on the November 14, 2023, agenda of the Board of Supervisors. The only difference between

this new alternative amendment and the prior version is that the *alternative proposal* will remove the ability to recall “appointed” officers (which is the same as “appointive” officers as indicated above). Should the Board of Supervisors adopt this version for placement on the ballot, officials holding offices defined in Section 17 as appointive will no longer be subject to recall, which is the case in most if not all counties in the State of California for the officers at issue.

9. Would the proposed amendment to Section 62 of the County Charter change what happens if an elected County officer is recalled?

Yes, the proposed amendment to the County Charter would change what happens if an elected officer is recalled.

Under both State law and the County Charter, if an elected officer is recalled, the office becomes vacant.

Under the current County Charter, a recall ballot includes two parts. The first part asks voters whether to recall the elected officer. The second part asks voters to vote on candidates to fill the resulting vacancy, if the elected officer is recalled. The nominees to fill the vacant office appear on the ballot along with the question of whether to recall the elected officer. But votes for those nominees only matter if the vote to recall is successful.

Under State law, if a county elected officer is recalled, the officer is removed and the office shall be vacant until it is filled according to law. Under State law currently, there is not a provision for electing a nominee to replace a recalled County officer at the same election and on the same ballot as the recall.

If State law were applicable in the County, under the County Charter, the process for filling a vacancy created by the recall of a county elected official would depend on the office. Please refer to Sections 8, 20, and 33 of the County Charter.

10. Why adopt procedures that do not allow for the replacement candidate to be selected on the same ballot as the recall election?

It may not be possible to follow the process described in the current County Charter. The current County Charter states that nominees to appear on the recall election ballot must be nominated according to a State law no longer in effect. This leaves State law procedures to fill in the gap. But State law currently *requires the nomination process to be completed by the 88th day before an election*. As noted above in the answer to Question 4, the County Charter requires the recall election to occur *between 35 and 40 days after the Board of Supervisors calls the election, or 60 days for a consolidated election*. The County Charter’s short timeframe for holding the recall election leads to the absurd result that the nomination process for replacement candidates is to be completed before the Board of Supervisors could even call for a recall election. And before the recall petition signatures are counted and verified, i.e., before the ROV could even know that a recall election will move forward and set an election date.

Even if the County could alter the period for nominations, having a nomination period after the Board of Supervisors has called a recall election would reduce the amount of time available to prepare and distribute ballots and voter information. It does not currently appear possible to prepare and distribute recall election ballots and voter information within 35-40, or even 60 days,

and also include a time for a nomination process for candidates for the office to file to be placed on the ballot at the recall election.

As drafted, the proposed amendment to the County Charter would apply to a recall election that has not been called by the Board of Supervisors at the time that the Charter amendment becomes effective.

If the County continues to set forth detailed recall procedures in the Charter, the potential remains for the County's recall procedures to once again fall out of date—because the Charter cannot be amended nimbly. The State legislature has the ability to amend election laws that are applicable to the County during its legislative cycle without regard to election dates and without the condition that the amendments be approved by voters. By following State law procedures, the County's process will evolve just as nimbly and without delay.

11. Would the proposed amendment to Section 62 of the County Charter make any changes to the form of the petition required for a recall?

Yes. The County Charter requires the recall petition to include a field for someone signing the petition to fill in their occupation. State law does not include that requirement. If the County Charter were amended as proposed, the County would follow State law. A recall petition would no longer be required to include a field for a signer's occupation.

The Registrar issued a guidance document entitled, "Procedures for Recalling County of Alameda Officers" (the "Recall Guide"). In accord with the Recall Guide, the signer must indicate his or her occupation or write "none," "n/a," "no occupation," or similar language to indicate no occupation in the space provided. As required by the current Charter, the Registrar will reject any petition signature that leaves the occupation field blank. Under the proposed amendment to the Charter, the occupation field would not be required, allowing registered County voters interested in signing a recall petition to have their signature counted without disclosing their occupation.

12. Would the proposed amendment to Section 62 of the County Charter make any changes to who is allowed to circulate a recall petition?

Technically, yes, the proposed amendment to the County Charter would change who is allowed to circulate a recall petition. In practice, there would be no change because the courts have said that a provision similar to one found in the Charter is not enforceable as applied to other elections where it was applied.

Section 62 of the County Charter requires recall 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. If the County Charter were amended as proposed, the Charter would allow this broader pool of individuals to circulate recall petitions, as compared to the narrower field described in the current Charter language. The County does not intend to enforce the unconstitutional provision. The proposed amendment would remove it from the Charter and avoid confusion regarding its applicability.

13. Would the proposed amendment to Section 62 of the County Charter change the process for verifying signatures on a recall petition?

Yes. Upon presentation of signatures in support of a recall petition, the County Charter allows the Registrar of Voters 10 days to determine whether a recall petition has a sufficient number of valid registered voter signatures. The ROV's Recall Guide notes that the Registrar might not be able to complete the review within that timeframe. If the Registrar determines that the petition does not include a legally sufficient number of valid registered voter signatures, then the Charter allows the proponents 10 additional days to gather more signatures and supplement the petition. The Registrar must then make a final determination about the sufficiency of the petition within 10 days from the submission of the supplement to the petition.

State law allows the Registrar 30 days (excluding holidays and weekends) to determine whether a recall petition has a sufficient number of valid registered voter signatures. If the Registrar determines that the petition does not include a legally sufficient number of valid registered voter signatures, State law does not allow recall proponents to supplement an insufficient petition.

If the County Charter were amended as proposed, the County would follow State law. The Registrar would have 30 days (excluding weekends and holidays) to review the signatures on a recall petition. If the Registrar determined that the petition did not include a sufficient number of valid signatures by registered County voters, the recall proponents would not be allowed to submit additional signatures.

14. Would the proposed amendment to Section 62 of the County Charter change who is allowed to look at a recall petition if the Registrar determines that a recall petition did not include enough valid signatures from registered County voters?

Yes. The County Charter currently states that if the Registrar determines that a recall petition does not have enough valid signatures from registered County voters, then the petition remains on file as a public record. Under State law, if the Registrar determines that a recall petition is insufficient, only the following may view the petition: (1) a public officer or public employee who has the duty of receiving, examining, or preserving the petition, or who is responsible for preparation of a memorandum regarding which registered voters signed the petition, and (2) the recall proponent and a representative of the proponent and only for the purpose of determining which signatures were disqualified and the reasons they were disqualified.

If the County Charter were amended as proposed, the County would follow State law.

15. How is the date of a recall election determined under the Charter, and will how that date is determined change under State law?

Recall elections, whether guided by the County Charter or by State law, are not relegated to specific dates. The steps that lead-up to a recall election must occur within certain timeframes. But those timeframes are largely ranges of time or deadlines for completion of an act, that when achieved, trigger a timeframe for the next step in the process. Thus, it is impossible to predict a

precise date when a recall election would occur before a number of prerequisite steps have been completed.

The County Charter is silent on how long recall proponents are allowed to collect signatures. The Registrar's Recall Guide states that the County will follow California law regarding the time allowed to gather signatures on a recall petition. State law allows 160 days for signature gathering. That means that the proponents of a recall who were allowed to begin collecting signatures on September 28, 2023, must submit the petition by March 5, 2024.

a. Timeline and potential election date under County Charter and State law (solely for the purpose of the number of days allowed to collect signatures)

The County Charter allows the Registrar of Voters 10 days to determine whether a recall petition has a sufficient number of valid registered voter signatures. The Recall Guide notes that the Registrar might not be able to complete the review within that timeframe. If the Registrar determines that the petition does not include a legally sufficient number of valid registered voter signatures, then the Charter allows the proponents 10 additional days to gather more signatures and supplement the petition. The Registrar must then make a final determination about the sufficiency of the petition within 10 days from the submission of the supplement to the petition.

If the Registrar determines that the petition has a sufficient number of valid registered voter signatures, the Charter requires the Registrar to certify it to the Board of Supervisors "without delay." The Board of Supervisors must order an election on the recall within 35 to 40 days or within 60 days if another election will occur in the County during that time so that the Board of Supervisors can consolidate the elections.

Hypothetical Recall Election Timeline under the County Charter and State Law (as the source in law for the number of days to collect signatures)

September 28, 2023	Signature gathering begins
March 5, 2024	Proponents submit recall petition
March 15, 2024	Registrar determines that recall petition is sufficient
March 26 or April 2, 2024	Potential Board of Supervisors meeting dates (2024 Board meeting schedule not currently set)
April 30 to May 5 or May 7 to May 12, 2024	Potential election dates (35-40 days after potential Board of Supervisors meeting dates)

If the initial submission of the recall petition lacks sufficient valid registered voter signatures, then the supplemental submission process could occur. It could push the date of the election into May or June depending upon the adopted meeting schedule of the Board of Supervisors. Additionally, if any of the steps outlined above occur earlier than the deadline for completion used in the hypothetical, then the Charter could indicate that the recall election is to be held on dates earlier than April 30 to May 5, 2024.

b. Timeline and potential election date under amended Charter and State law

If the proposed amendment to Section 62 of the County Charter were approved by voters at the election held on March 5, 2024, the amendment would not take effect until accepted and filed by the Secretary of State. (Government Code section 23723.) The amendment could not be filed until after the certification of the results of the election, which potentially would not occur until April 2 or 9, 2024, depending on the Board of Supervisors’ adopted meeting schedule for 2024.

The effective date of the proposed Charter amendment is uncertain but could occur before the Board of Supervisors is required to call an election as a result of the Registrar determining that the recall petition has a sufficient number of valid registered voter signatures. In that event, the law applicable to the recall would change before the recall process is complete. Consistent with California case law, the amended Charter, and thus State law, would apply to the parts of the recall process that had not been completed up to that point.

As part of this hypothetical, the FAQ also assumes that the Registrar might initially determine that the recall petition does not have a sufficient number of valid registered voter signatures. Under the current Charter, the proponents would then have 10 days to supplement the petition with additional signatures, and the Registrar would have an additional 10 days to review the supplemented petition.

Hypothetical Recall Election Timeline if Charter Amendment Went into Effect Prior to the Board of Supervisors Calling the Recall Election

September 28, 2023	Signature gathering begins
March 5, 2024	Proponents submit recall petition
March 15, 2024	Registrar determines that recall petition is insufficient
March 25, 2024	Proponents supplement recall petition
April 4, 2024	Registrar determines that recall petition is sufficient
April 16, 2024	Board of Supervisors receives certificate of sufficiency of recall petition (potential Board of Supervisors meeting; 2024 meeting schedule has not been set)
<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; padding: 5px; margin-right: 10px;"> Charter amendment goes into effect </div> <div style="font-size: 2em;">↑</div> </div>	
April 30, 2024	Board of Supervisors calls recall election (potential meeting of the Board 14 days from receipt of certificate of sufficiency)
<div style="display: flex; align-items: center; justify-content: center;"> <div style="font-size: 2em;">↓</div> </div>	
July 27 to September 2, 2024	Potential election date (88-125 days after Board of Supervisors meeting)

In the hypothetical situation described above, the Charter amendment would go into effect before the Board of Supervisors called the recall election. The County would follow the Charter recall provisions as they currently stand for signature gathering and verification. Under the amended Charter, the County would switch to following State law for a recall election. The Board would be able to set the election for a date between 88 and 125 days from the meeting at which it calls the election, not 35 to 40 days, as in the current Charter. Additionally, nominees to fill the office would not be allowed to appear on the ballot to be elected to replace a recalled. Instead, the office would become vacant, and the vacancy would be filled according to law.

16. There has been discussion in the community about whether the proposed amendment to Section 62 of the Charter would change the possibility of a recall election being held on November 5, 2024. Can you explain?

As you can see in the timelines above, there are too many variables to predict the precise election date of a recall. If the Board of Supervisors puts the proposed Charter amendment on the ballot for the election on March 5, 2024, as required steps of the Charter amendment process occur, timelines will become clearer. Similarly, as other future facts related to a recall become certain, the schedule for a recall election would also become more predictable. Until the County has more information, it is not possible to say whether it would be possible for a recall election to occur or not occur on either March 5 or November 5, 2024.