

DISCLAIMER

With this recall guide (“Guide”), the office of the Registrar of Voters for the County of Alameda (“ROV” or “elections official”) outlines its understanding of the procedures for recalling a County of Alameda (“County”) officer as outlined in the California Elections Code and County Charter (“Charter”). It does not have the force and effect of law, regulation or rule. It is distributed with the understanding that neither the County nor the ROV is rendering or providing legal advice. This Guide, therefore, is not to be a substitute for legal counsel for the individual or organization using it.

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 Guide. The ROV strongly recommends that any interested party obtain legal advice to assist in complying with applicable law.

GENERAL INFORMATION

This Guide provides the public with a general overview of the County's unique recall procedures. **It applies only to County officers.**¹

The County is a charter county. As such, the Charter may, and does, provide for the recall of county officers. (See Cal. Const., Art. XI, §4(c); Charter, § 62.) The Charter governs the recall procedures for County officers and supersedes the recall provisions of the Elections Code to the extent that they are inconsistent with the Charter.

The Charter's recall provisions, however, contain language that has been ruled unconstitutional in other contexts. This Guide highlights those provisions, which will not be enforced for any recall governed by the Charter. The Charter also cites to California Political Code section 1188. That section covered the procedure for independent nominations, which are now outlined in Elections Code sections 8300, *et seq.* The County will follow the Elections Code procedures for independent nominations to the extent possible.

The recall provisions of the Charter are also silent on several recall procedures outlined in the Elections Code. Many of these important procedures occur before the circulation of the recall petition. To the extent the Charter is silent on these procedures and they do not contradict the Charter, the ROV will use these procedures when processing a recall of a County officer.

This unique recall procedure presents many challenges as the Charter recall provisions predate many of the procedures currently outlined in the Elections Code. Only the voters of the County can amend the Charter. The Board of Supervisors intends to place a measure on the ballot at the next election to ask the voters to amend the Charter's recall provisions by adopting, in their entirety, the Elections Code recall procedures. Until then, the ROV will follow the procedure outlined in this Guide unless a court orders otherwise.

¹ This Guide does not cover recall procedures for city, school district, special district, state or federal officers. For city and other, non-county local officers, you should contact the city clerk. For state officials, you may want to refer to the Secretary of State's guidelines located at: <https://elections.cdn.sos.ca.gov/recalls/recall-procedures-Guide.pdf>. Federal officers are not subject to recall.

Recall of County of Alameda Officers

To use this Guide, refer to Charter section 62 and Elections Code sections 11000, *et seq.*

Preliminary Steps

The Notice of Intention

Proponents begin the recall of an elective County officer, including any officer appointed in lieu of election or to fill a vacancy, by the service, filing and publication or posting of a notice of intention to circulate a recall petition. (Elections Code § 11006)

Prepare the Notice of Intention

The proponents should ensure that the notice of intention complies with California law. If a notice of intention is found to be deficient, the proponents will be required to prepare a new notice of intention. The notice of intention must contain:

- (a) The name and title of the officer sought to be recalled.
- (b) A statement, not over two hundred words in length, of the reasons for the recall.
- (c) The printed name, signature, and residence address, including street and number, city, and ZIP Code, of each proponent of the recall. If a proponent cannot receive mail at his or her residence address, the notice of intention must also contain a mailing address for the proponent.
- (d) The appropriate number of valid signatures:
 - (1) For a local County office where the number of registered voters in the electoral jurisdiction is at least 100,000, the minimum number of proponents listed on the notice of intention is 50, or equal to five times the number of signatures required to have been filed on the

nomination paper of the officer sought to be recalled, whichever is higher.

- (2) For a local County office where the number of registered voters in the electoral jurisdiction is at least 1,000 but less than 100,000, the minimum number of proponents listed on the notice of intention is 30, or equal to three times the number of signatures required to have been filed on the nomination paper of the officer sought to be recalled, whichever is higher.
- (3) For a local County office where the number of registered voters in the electoral jurisdiction is less than 1,000, the minimum number of proponents listed on the notice of intention is 30.
- (e) The text of Elections Code section 11023, which describes how the officer sought to be recalled may file an answer.

[See Exhibit A] (Elections Code § 11020)

Serve and File the Notice of Intention

A copy of the notice of intention must be served by personal delivery or by certified mail on the officer sought to be recalled. In addition, the original of the notice of intention, along with an affidavit of the time and manner of service, must be filed with the local elections official within seven days of being served. A separate notice of intention must be filed for each officer sought to be recalled.

[See Exhibits B and C] (Elections Code § 11021)

Obtain and File Proof of Publication

The proponents must file proof of publication of the notice of intention at the same time that they file two blank copies of the proposed recall petition with the local elections official.² Proof of publication is obtained from the newspaper publisher after the notice of intention appears in print. (Elections Code § 11042)

² In the rare case that publication was satisfied by posting the Notice of Intention in three public places, an affidavit of posting must be filed instead of proof of publication.

Answer of Recallee

Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the local elections official an answer of not more than two hundred words. (Elections Code §11023(a))

The answer must be signed and accompanied by the printed name, and business or residence address of the officer sought to be recalled. (Elections Code §11023 (c))

If an answer is filed, the officer must, within seven days after the filing of the notice of intention, serve a copy of the answer, by personal delivery or by certified mail, on one of the proponents named in the notice. (Elections Code § 11023(b))

Prepare the Recall Petition

The next step in the recall process for local County officers requires the proponents to prepare the recall petition for circulation. The Secretary of State provides a format template for the petition, which is included as Exhibit D to this publication, or may be obtained from the elections official. To comply with Charter section 62, however, the recall petition must also include an area or space where the signer can indicate his or her occupation. (Charter § 62; Elections Code §§ 11041, 11043.5)

All petition sections must be printed in uniform size and darkness with uniform spacing. [See Exhibit D] (Elections Code § 11041)

Heading

The recall petition must include a margin at least one inch wide across the top of each page and a margin at least one-half inch wide along the bottom of each page.

(Elections Code § 11043)

Each side of a sheet of paper on which signatures appear must include, in no less than 8-point type:

- (a) A copy of the notice of intention, including the statement of reasons for recall, and the names (no addresses) of at least ten proponents. The text of Elections Code section 11023 does not need to be included as part of the language of the notice of intention on the petition.

- (b) The answer, if any, of the officer sought to be recalled. If the officer has not answered, the petition must so state.
- (c) If the officer sought to be recalled is a member of the governing board of a school district, the petition shall include the estimate of the cost of conducting the special election, as determined by the county elections official and the school district. (Charter § 62; Elections Code § 11041(a)(4))

Official Top Funders Disclosure Requirements

For any recall petition for which the circulation is paid for by a committee formed pursuant to Government Code section 82013, an Official Top Funders disclosure shall be included on the petition or in a separate document presented to a prospective signer of the petition. (Elections Code § 107(b))

Elections officials are not required to verify the accuracy of the information or to re-approve the petition upon any updates the committee makes. (Elections Code § 107(g))

Official Top Funders Disclosure as a separate document

The Official Top Funders Sheet must be in 14-point black roman type font on a plain, contrasting background, centered horizontally, except as described below. The text shall not be condensed or have spacing between characters reduced to be narrower than a normal roman type. (Elections Code § 107(a)(1))

The top of the sheet shall have the text “OFFICIAL TOP FUNDERS. Valid only for”, followed by a month and year that starts at most seven days after the date the top contributors as defined in Government Code section 84501(c) were last confirmed. (Elections Code 107(a)(2).) This information shall be boldface and at least 16-point font. Following the top line, separated by a blank horizontal line, shall be the title of the recall as it appears on the petition, in all capital letters. (Elections Code § 107(a)(2), (3))

Next, separated by a blank horizontal line, shall appear a disclosure statement in a printed or drawn box with a black border. (Elections Code § 107(a)(4).) At the top of the

disclosure statement, the statement shall read, "Petition circulation paid for by" in boldface text followed by the name of the committee as it appears on the most recent Statement of Organization filed pursuant to Government Code section 84101 on the following line. (Elections Code § 107(a)(4)(A)-(D).) If the committee has any top contributors as defined in Government Code section 84501(c), it shall be followed by a blank horizontal line and then the underlined text "Committee major funding from:". The top contributors, as defined in Government Code section 84501(c)), if any, shall be disclosed in boldface text in descending order. (Elections Code § 107(a)(4)(D))

The committee, in its discretion, may include, in underlined text, "Endorsed by:" followed by a list, not underlined, of up to three endorsers. The text pursuant to this subparagraph shall be separated from the text above and below it by a blank horizontal line. (Elections Code § 107(a)(4)(E))

The following line shall include the text "Latest Official Top Funders:" followed by one of the internet websites described in Elections Code section 107(a)(4)(F). (Elections Code § 107(a)(4)(F))

The committee's web page must include a prominent link to the most recent Official Top Funders sheet in a format that allows it to be viewed on an internet website and printed out on a single page of paper. (Elections Code § 107(c)(1))

Official Top Funders Disclosure on the petition

If the committee chooses to include the disclosure statement on the petition, the requirements are as follows:

The disclosure statement shall have a solid white background and shall be in a printed or drawn box with a black border and shall appear before that portion of the petition for voters' signatures, printed names, and residence addresses. The text in the disclosure area shall be in a black Arial equivalent type with a type size of at least 10 point, with all lines centered horizontally in the disclosure area. (Elections Code § 107(b)(1))

The top of the disclosure shall include the text "OFFICIAL TOP FUNDERS. Valid only for", followed by a month and year that starts at most seven days after the date the top contributors as defined in Government Code section 84501(c) were last confirmed. The text of this paragraph shall be boldface. (Elections Code § 107(b)(2))

Next shall appear, on a separate horizontal line, the text "Petition circulation paid for by", followed by the name of the committee as it appears on the most recent Statement of Organization filed pursuant to Government Code section 84101. If the committee has any top contributors as defined in Government Code section 84501(c), it shall be

followed by, on a separate horizontal line, the underlined text “Committee major funding from:”.

(Elections Code § 107(b)(3))

The top contributors as defined in Government Code section 84501(c), if any, shall each be disclosed in boldface text on a separate horizontal line separate from any other text, in descending order, beginning with the top contributor who made the largest cumulative contributions, as defined in Government Code section 84501(b), on the first line.

(Elections Code § 107(b)(4))

The committee, in its discretion, may include the underlined text “Endorsed by:”, followed by a list, not underlined, of up to three endorsers. The text in this paragraph shall be separated from the text above and below it by a blank horizontal line.

(Elections Code § 107(b)(5))

The following line shall include the text “Latest info:” followed by the URL for the internet website described in Elections Code section 107(c). The text specified in this paragraph shall be underlined.

(Elections Code § 107(b)(6))

The committee’s web page, if any, must include a prominent link to the most recent Official Top Funders sheet in a format that allows it to be viewed on an internet website and printed out on a single page of paper.

(Elections Code § 107(c)(1))

Notice to Signers

The petition shall contain, 11-point type, before that portion of the petition for voters’ signatures, printed names, and residence addresses, the following language, in order:

- (a) “NOTICE TO THE PUBLIC:”. This text shall be in a boldface type.
- (b) If the petition includes the disclosure statement described by subdivision (b) of Section 107, the text “SIGN ONLY IF IT IS THE SAME MONTH SHOWN IN THE OFFICIAL TOP FUNDERS OR YOU SAW AN “OFFICIAL TOP FUNDERS” SHEET FOR THIS MONTH.” This text shall be in a boldface type.
- (c) “THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.” This text shall be in a non-boldface type.

(Elections Code § 101)

Signature Space

Each signer must personally place his or her own information on the petition and must personally sign it (unless prevented by disability, for example). The petition must be designed so that each signer can personally affix his or her:

- (a) Printed name.
- (b) Signature.
- (c) Residence address, giving street and number, or if no street or number exists, an adequate designation of the residence so that its location may be readily determined.
- (d) The name of the incorporated city or unincorporated community.
- (e) If the petition does not include the disclosure statement described by subdivision (b) of Section 107, the following text on a separate horizontal line below the signer's printed name and above the signer's signature: "DO NOT SIGN UNLESS you have seen Official Top Funders sheet and its month is still valid." The text "DO NOT SIGN UNLESS" shall be in all capitals and in boldface. The other text shall be capitalized as shown and shall not be in boldface. (Elections Code §§ 100, 11043)
- (f) Occupation. The Charter, unlike the Elections Code, requires the signer to indicate his or her occupation. Signers who have no occupation (e.g., unemployed or retired) should indicate "none," "n/a," "no occupation," or similar language to indicate no occupation in the space provided.

(Charter, § 62)

Pursuant to the California Supreme Court's decision in *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 180 Cal.Rptr. 297, the petition form must direct signers to include their "residence address" rather than "address as registered" or other address.

Noncomplying petition forms will be rejected as invalid.

Signature spaces must be consecutively numbered commencing with the number one for each petition section. (Elections Code § 100)

A space at least one inch wide must be left blank along the right margin of the page, after each name and address, for the use of the elections official in verifying the petition. (Elections Code §§ 100, 11043)

Declaration of Circulator

Each section of the petition must have attached to it a declaration signed by the circulator (person soliciting signatures) of that section of the petition, setting forth in the circulator's own hand all of the following:

- (a) The printed name of the circulator.
- (b) The residence address of the circulator, giving street and number, or if no street or number exists, an adequate designation of the residence so that its location may be readily determined.
- (c) The dates between which all signatures to the petition section were obtained.
- (d) That the circulator circulated that section and witnessed the appended signatures being written.
- (e) That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.
- (f) If the petition does not include the disclosure statement described by subdivision (b) of Section 107, that the circulator showed each signer a valid and unfalsified "Official Top Funders" sheet, as required by Section 107.
- (g) That the circulator is 18 years of age or older.
- (h) That the circulator certifies to the content of the declaration as to its truth and correctness, under penalty of perjury. The circulator shall state the date and the place of execution on the declaration along with the circulator's signature.

The Charter requires a "qualified elector" to make the affidavit, i.e., circulate the petition. To the extent that "qualified elector" refers to a registered voter, the United States Supreme Court has ruled that this restriction is an unconstitutional limitation on protected expressive activity. Consequently, the County will use the requirements for circulators outlined in Elections Code section 102.

The circulator must personally affix his or her printed name and residence address and the specific dates of circulation of each petition section in the circulator's affidavit.

Preprinted dates, or generalized dates other than the particular range of dates on which the petition section was circulated, are not authorized. (Elections Code §§ 104, 11046)

Number of Sections

Petitions to recall local County elected officers may consist of any number of separate sections (pages). The sections (pages) need to be exactly the same except for the signatures and information required to be affixed by signers and circulators.

(Charter, §62; §11040)

The number of signatures attached to each section is left up to the discretion of the person soliciting the signatures. Each section may consist of any number of separate pages. Each side of a sheet of paper on which any signature may appear is a page.

(Elections Code § 11040)

Public Examination Period

For a petition for the recall of a local officer, the elections official shall make a copy of the petition available for public examination in the elections official's office for 10 days, which shall run concurrently with the 10-day review period for the elections official to determine whether the form and wording of the petition are sufficient pursuant to Elections Code section 11042.

During the public examination period, a voter of the applicable electoral jurisdiction or the elections official may seek a writ of mandate or an injunction requiring any or all of the statement of the proponents or the answer of the officer included with the petition to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-day public examination period.

A peremptory writ of mandate or an injunction shall issue only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of the Elections Code.

(Elections Code § 11042.5)

Receive Approval of the Recall Petition

Proponents must file two blank copies of the proposed petition with the elections official within ten days after the filing of the answer to the notice of intention, or, if no answer is filed, within ten days after the expiration of the seven-day period for filing the answer.

The elections official must, within ten days of receiving the copies of the petition, determine whether the proposed form and wording of the petition meet the necessary requirements and notify proponents in writing of the findings. If it is found that the petition does not meet the requirements, the notification must include a statement of what alterations in the petition are necessary. Then, the proponents must file two blank copies of the corrected petition with the elections official within ten days after receiving the notification.

The submitted blank copies of the petition will be carefully reviewed for uniformity correctness and will be compared to the notice of intention and publication to assure accuracy in text, punctuation, capitalization, spelling, format, etc. If the comparison discloses discrepancies, the petition will be rejected.

The ten-day correction notification period and ten-day filing period for corrected petitions are repeated until the elections official finds that no alterations are required. No signatures may be obtained on the recall petition until the form of the petition has been approved by the elections official. (Elections Code § 11042)

Number of valid signatures needed to qualify a particular recall:

The Charter requires the following:

- a. For Officers Elected At Large (i.e., Countywide): At least 15% of the vote cast within the County for all candidates for the office of the Governor at the last election at which a governor was elected; or
- b. For Officers Elected by District: At least 25% of such vote cast within the district for which the officer sought to be recalled was elected or appointed.

(Charter § 62)

The thresholds under Charter § 62 are different than the thresholds outlined in the Elections Code for the recall of county officers. (Elections Code § 11221)

Circulate the Recall Petition

Who Can Circulate

As mentioned above, the Charter requires a “qualified elector” to circulate the petition. To the extent that “qualified elector” refers to a registered voter, the United States Supreme Court has ruled that this requirement unconstitutionally restricts protected expressive activity. Consequently, the County will use the requirements for circulators outlined in Elections Code section 102. The recall petition can be circulated by any person 18 years of age or older.

(Elections Code §§ 102, 11045)

Who Can Sign Petition

Registered voters who are qualified to vote for the office of the officer sought to be recalled can sign a recall petition. (Elections Code §§ 322, 11045)

Withdrawal of Signatures

Any voter may withdraw his or her signature from the recall petition upon filing a written request with the county elections official prior to the day the petition section on which the signature appears is filed. The written request shall include the name or title of the petitioner and the voter's name, residence address, and signature.

(Elections Code §§ 103, 11303)

Filing of Petition – Deadline

After approval by the elections official, proponents must submit to the elections official, during normal business hours as posted, a petition with the requisite number of signatures within:

- (a) 40 days if the electoral jurisdiction has less than 1,000 registered voters.
- (b) 60 days if the electoral jurisdiction has less than 5,000 registered voters but at least 1,000.
- (c) 90 days if the electoral jurisdiction has less than 10,000 registered voters but at least 5,000.
- (d) 120 days if the electoral jurisdiction has less than 50,000 registered voters but at least 10,000.
- (e) 160 days if the electoral jurisdiction has 50,000 registered voters or more.³ (Elections Code § 11220)

Each petition section shall be filed by the proponents or by any person or persons authorized in writing by a proponent. All sections of the petition must be filed at one time. A copy of the written authorization must be included with the filing. Each section of

³ The number of registered voters is calculated as of the time of the of the last report of registration by the county elections official to the Secretary of State made prior to approval of the petition format by the county elections official.

the petition must be filed with the elections official in the jurisdiction for which it was circulated. (Elections Code § 11222)

Examination by the Elections Official

The Charter allows the ROV 10 days to determine whether there is a sufficient number of valid signatures for the recall to qualify. (This is different from State law, which allows the ROV 30 days, excluding weekends and holidays to determine the sufficiency of a recall petition. (Elections Code § 11224(a).) The Elections Code provides several methods of reviewing the signatures, including random sampling, while the Charter is silent on the method to be used. The ROV will use the random sampling method as outlined in the Elections Code as described below.

Review Upon Filing. When proponents bring in the petition for filing, the elections official must count the number of signatures on it. If, from this examination the elections official determines that the number of signatures, on its face, equals or is in excess of the minimum number of signatures required, the elections official shall accept the petition for filing. The petition shall be deemed as filed on that date. If, from the elections official's examination, the elections official determines that the number of signatures, prima facie, does not equal or exceed the minimum number of signatures required, the official shall not take further action. (Elections Code § 11222)

Petition Examination. The elections official must verify every signature submitted or, where more than 500 signatures are submitted, may use a random sampling signature verification technique.

All-Signature Examination Method. If the random sampling technique is not used, the elections official has 10 days from the date of filing of the petition to determine whether the petition is signed by the required number of voters, certify the results of the examination, and notify the proponents. If the petition is found to have sufficient signatures, the elections official must certify the results to the governing board without delay. If the petition is found to have insufficient signatures, the proponents shall have 10 days to supplement the petition. If the petition is still insufficient with the supplement, no action shall be taken and the petition shall remain on file as a public record.

(Charter § 62; Elections Code § 11224)

Random Sampling Method. Using the random sampling technique, the elections official must complete the examination of the sample of signatures within 10 days of the filing of the petition. If, for example, eighty percent (80%) of the sample

signatures are found to be valid, then eighty percent (80%) of the entire number of signatures are deemed to be valid.

If the statistical sampling determines that the number of valid signatures is greater than one hundred ten percent (110%) of the required number, the petition is considered qualified without further verification, and the elections official must certify the results of the examination to the governing board without delay.

(Elections Code §11225)

If the statistical sampling shows that the number of valid signatures is within ninety to one hundred ten percent (90-110%) of the number of signatures needed, the elections official must examine and verify each signature filed. If the result of this complete examination shows that the petition has the required number of signatures, the elections official must certify the results of the examination to the governing body without delay. If the number of valid signatures is less than the required number, proponents shall have 10 days to supplement the petition. If the petition is still insufficient with the supplement, no action shall be taken and the petition shall remain on file as a public record. However, the failure to secure sufficient signatures shall not preclude the later filing of an entirely new petition to the same effect.

(Charter § 62; Elections Code 11225)

Upon completing the examination of the petition, the elections official shall attach to the petition a certificate showing the result of this examination and shall notify the proponents of either the sufficiency or insufficiency of the petition.

(Charter § 62; Elections Code §§ 11222, 11224, 11225, 11226, 11227)

Regardless of the technique used, the ROV has 10 days from the date of filing of the petition, or any supplement to the same, to determine whether the petition is signed by the required number of voters, certify the results of the examination, and notify the proponents. Because the number of pages or sections may be in the tens of thousands for countywide offices, it may not be possible to comply with this 10 day deadline mandated by the Charter.

(Charter § 62)

Examination of Petition by Proponent

If a petition is found to be **sufficient** by the ROV, no one may examine the petition.

(Gov't Code §7924.110)

If a petition is found to be **insufficient** by the ROV, the petition shall remain on file as a public record. (Charter § 62)

This is a different rule than the general rule under the Elections and Government Codes. Under those provisions, if the petition is found to be insufficient, only the proponents, whose names are listed on the Notice of Intention, may examine the petition signatures in order to ascertain which signatures were disqualified and the reasons therefore.

(Gov't Code §7924.100-7924.110; Elec. Code §§ 343, 11301)

The elections official shall preserve in that person's office all recall petitions filed for eight months after the results of the election for which the petition is qualified, or if no election is held, eight months after the elections official's final examination of the petition. (Elections Code §17400)

Notice of Recall Election

The certificate of sufficiency shall be submitted to the governing body without delay. The governing body must issue an order causing a special election to be held not less than thirty-five (35) nor more than forty (40) days after the date of the order calling the election.

However, the election may be consolidated with an election that is to occur within the County not less than thirty-five (35) days or more than sixty (60) days from the date of the order calling the recall election.

The recall ballot shall ask: "Shall [the recallee] be recalled from the office of [title of office]?" Following this question, the words "Yes" and "No" shall appear on separate lines with a blank space to the right of each where each voter can mark his or her choice.

The names of those persons who shall have been nominated as candidates to succeed the recallee shall appear under the recall question. The recallee shall not appear as a candidate on the ballot. (Charter §62)

The Charter states that no vote for any candidate shall be counted unless the voter also voted on the recall. The ROV will not enforce this language as it has been held unconstitutional. Consequently, a voter may skip the yes/no recall question and still vote for a candidate, if any, appearing on the ballot.

The Charter cites to the general law governing independent nomination procedures for potential nominees to appear on the recall ballot. The statute cited (section 1188 of the Political Code), however, no longer exists. This section has been included into the current general law provisions that govern independent nominations with key amendments. (See Cal. Elec. Code §§ 8300, *et seq.*) As currently drafted, however, the timeline of those procedures do not correspond to the election date timelines mandated by the Charter. This creates the possibility that no candidate may qualify to be on the ballot. In such case, a majority “yes” vote on the recall may result in a vacancy for the recallee’s office.

(Elections Code §§8300, *et seq.*; Charter § 62)