

Oakland's Avoidable Mayoral Carousel

The problems that Oakland and the county are facing were foreseeable when the legislature upended local recall procedures. Either way, this mayoral carousel should inspire Oakland and other charter cities and counties to rethink their recall laws.



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By Joshua Spivak and David A. Carrillo | June 25, 2024 at 10:30 AM

Less than halfway into her term Oakland Mayor Sheng Thao looks set to face the city's first-ever mayoral recall election this fall, in the nation's largest mayoral recall vote since 2011. If she loses Oakland will see a rotating cast of characters in the mayor's seat: thanks to little-noticed changes in state recall law, Oakland could have four mayors in just three months. That bizarre outcome is not Oakland's fault. As with the shambles Alameda County is suffering in the District Attorney Pamela Price recall, Oakland's pickle is yet more fallout from the legislature's recent move against local recalls.

The legislature precipitated this turmoil with its quiet changes to local recall laws in 2022, spurred by the aftermath of the failed 2021 recall targeting Gov. Gavin Newsom. Despite calls for reform, the legislature couldn't agree on any of the various proposals to revise state-officer recall procedures, and changing those laws requires a voter-approved constitutional amendment

anyway. So the legislature instead picked the low-hanging fruit and revised state law on local recalls—which do not require state electorate approval to change.

Some of those changes made the recall more difficult to get to the ballot, as by making signature gathering harder. And the legislature abolished (for local recalls) the familiar two-votes-in-one-ballot process everyone memorized in the 2021 Newsom recall: in one day you get one ballot, decide on the recall, and pick a replacement. That's still state law; if for example a renewed recall drive against Newsom qualifies it will proceed just like the last one. But that procedure now only applies to state officials, and the new local procedures apply to Oakland because its charter (Article 11, Section 1104) provides that the city's recall powers will "be exercised in the manner prescribed by general law of the state."

The one change that causes Oakland's headache is the new replacement procedure in Elections Code Section 11382, which now says that recalled local officials are replaced using whatever procedure local law provides for vacancies (also known as automatic replacement). Oakland's law (Article 3, Section 303) fills a vacant mayor's office with the city council president. If the unexpired term is over one year, the city must hold a special election within 120 days. That applies here since Thao's four-year term runs through 2026. The upshot: the city council president steps in if Thao is recalled.

The problem is that current Oakland City Council President Nikki Fortunato Bas is running for an Alameda County supervisor seat, and she came in first in the top-two race. Bas and Thao will be on the same ballot in November: Bas for supervisor, Thao for recall. If Bas wins the supervisor race and the recall succeeds, as city council president she presumably would serve as mayor until January, when she would vacate the job to become a supervisor. Bas would then be replaced as mayor by the new city council president until the special election. Or Bas could turn down the temporary mayor slot and permit the city council to appoint someone, or perhaps resign as president and allow another council member to become president-then-mayor. That's a lot of

mayors in just a few months: Thao, Bas, maybe a player to be named later, and then the special election replacement.

Problematic as they are, none of the legislature's changes to local recall law needed to apply to Oakland because it's a charter city with constitutional home rule powers to set the terms of its local elections by charter. Ceding control over its recalls as it did commits the city to whatever changes—like these—the legislature might enact. Here that likely forces the city to hold a replacement special election and require voters to weigh in twice, despite the intent of automatic replacement being to avoid successive votes.

This is made even more absurd because Oakland sits in Alameda County, which as a charter county was also free to ignore the legislature's new local recall rules and instead govern its own elections by charter. Yet earlier this year the county supervisors decided to adopt the new rules, and with that the county quickly mired itself in controversy as the change in law threw the pending county prosecutor recall into chaos.

The difference is that the county supervisors knew what they were buying when they switched the county to state law this year. But Oakland's charter Section 1104 has linked its recall of local elected officials to general state law since 1988. That made sense at the time: state recall laws then were longstanding and well understood, and that process (we thought) avoided many procedural problems other states faced. Oakland had no reason to expect the legislature would fix what wasn't broken. Other counties are now experiencing similar confusion: recall proponents in Shasta County expected the one-day-two-vote process, were unpleasantly surprised by the change, and asked the governor for special dispensation to choose their own replacement.

Finally, the recall may not be Thao's only problem, given reports about an FBI search at her home, although Thao's attorney told the San Francisco Chronicle that she was not the raid's target. A resignation is one scenario, but it would not affect the recall—under Elections Code

Section 11302(a) if a vacancy occurs in an office after a recall petition qualifies, “the recall election shall nevertheless proceed.”

Alameda County hasn’t seen a recall election qualify since at least 2011, but now (with two Sunol Glen school board members facing recalls in July) the county will have four recall elections in four months. Maybe there’s something in the water in the East Bay. More likely, the problems that Oakland and the county are facing were foreseeable when the legislature upended local recall procedures. Either way, this mayoral carousel should inspire Oakland and other charter cities and counties to rethink their recall laws.

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