

January 15, 2025

Kevin Jenkins, Interim Mayor
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Subject: Procedurally Irregular Tiebreaking Votes by Recalled Mayor

Dear Mayor Jenkins,

I am writing on behalf of the East Bay Rental Housing Association to express concern regarding the legitimacy of allowing a recalled Mayor to cast tiebreaking votes on Council actions after the Mayor was recalled from office by a vote of the people and the election results were officially certified by the Alameda County Registrar of Voters.

In particular, we object to the ordinance that was voted upon and passed by the Oakland City Council on December 17, 2024. This ordinance substantially reduces the banking of Consumer Price Index (CPI) rent increases and imposes significant new penalties on rental housing owners in arrears on their business license taxes. It also places burdensome new administrative requirements on rental owners when they communicate annual CPI rent adjustments.

The outcome of the vote on this ordinance was determined by former Mayor Sheng Thao, who cast the tiebreaking vote despite having been officially recalled from office by a vote of the people on November 5, 2024, that was certified by the Alameda County Registrar of Voters on December 5, 2024.

Section 1104 of the Oakland City charter states that the power to recall Oakland elected officials is "to be exercised in the manner prescribed by general law of the State."

California state law on recalls is clear: "If a majority of the votes on a recall proposal for a local officer are "Yes," the officer is removed, and the office shall be vacant until it is filled according to law." Such clear guidance plainly contemplates that temporary vacancies will result from recalls. It does not contain a grace period during which the recalled officer, while waiting for a declaration of vacancy by a City Council, is empowered to continue in office for the purpose of making tiebreaking votes or otherwise engaging in City governance.

Page 1 of 3

Notwithstanding this, subsequent to the recall, the Oakland City Council continued to solicit the recalled Mayor to vote in tiebreaking situations, and the recalled Mayor continued to cast such votes as if there had been no recall. The votes cast under this procedural irregularity have been concerned with particularly fraught and controversial public policy matters.

In pursuing this course of action, the Council and the recalled Mayor relied upon a November 27, 2024, legal opinion from the Oakland City Attorney. This opinion addresses the question, "When will the mayor's seat be vacant"? The opinion states, in part:

If a majority of the voters cast "yes" votes regarding the recall, the office will become vacant when the Council passes a resolution declaring the election results and declares a vacancy in accordance with Charter section 303.

This opinion is very concerning because Section 303 does not pertain to recalls. Section 303, entitled "Filling of Vacancy," provides only for the procedure for filling a vacancy in the Office of the Mayor should a vacancy occur due to a forfeiture as defined in Charter Section 304.

Section 304, entitled "What Constitutes a Vacancy," outlines the various forfeitures for which the Council may declare the office vacant.

The City Attorney's opinion does not include in its analysis the critical distinction between a vacancy due to forfeiture as defined in Charter Section 304 and a vacancy resulting from a recall election.

Since a recall election is not a forfeiture but is instead a political process, it is not addressed by either Section 303 or 304. Instead, it is covered by the aforementioned Section 1104, which clearly states that recalls will be exercised in the manner prescribed by the general laws of California.

Accordingly, at the time of the City Council meeting on December 17, 2024, Ms. Thao was no longer the Mayor of Oakland and should not have been involved in City governance. Yet she continued to cast tiebreaking votes.

Allowing a recalled official to cast tiebreaking votes makes a mockery of the recall process and crassly disregards the expressed will of Oakland voters, who clearly chose to remove this individual from office, but who subsequently found themselves once again subject to the wrecking ball public policy decisions they sought to eject.



We believe that the seriousness of this matter calls for an abundance of caution on the part of the City Council in addressing the validity of all ordinances passed, in which the recalled Mayor participated as a tiebreaker. The public must have confidence that all decisions made by the Council adhere to legal requirements and that no actions are taken by individuals who lack the authority to act on behalf of the city.

Considering the significant procedural irregularity in governance as outlined here, we formally request that the Council take immediate steps to rescind the results of all City Council actions that resulted from tiebreaking votes cast by the recalled Mayor.

This request is not made lightly, as we recognize the importance of preserving the integrity of Council decisions. We also understand the challenges of revisiting decisions. Nonetheless, it is essential to prioritize the rule of law and the trust of the community. Allowing a recalled Mayor to cast a deciding vote sets a troubling precedent that could erode public trust in the Council's procedures. Residents deserve assurance that their elected representatives adhere to the highest standards of accountability, ethics, and legality, especially in matters such as this.

I also want to emphasize that this request is made without any intent to disrupt the Council's work or question its broader legitimacy. Rather, it is a call to safeguard the integrity of the decision-making process.

We ask that the City Council respond within 10 calendar days to this formal request to rescind the ordinances passed on the basis of tiebreaking votes by the recalled Mayor.

Sincerely,

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cc: Ryan Richardson, City Attorney, City of Oakland
Jestin Johnson, City Administrator, City of Oakland