



SAN JOAQUIN
— COUNTY —

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Recount Guide

San Joaquin County Registrar of Voters

44 N. San Joaquin Street, Suite 350
Stockton, CA 95202

Post Office Box 810
Stockton, CA 95201

(209) 468-2890
Fax (209) 468-2889
www.sjcrov.org
registrar@sjgov.org

This Recount Guide summarizes and highlights laws applicable to recounts under California Elections Code ("E.C."). This guide is not intended to be, nor should it be, used as a substitute for legal counsel. This guide is not all-encompassing. Interested parties should not rely solely on this guide. The staff members of the San Joaquin County Registrar of Voters will provide informational material and direct you to resources. By law, employees are prohibited from answering questions of a legal nature and staff may direct you to consult an attorney

REQUESTING A RECOUNT

INTRODUCTION

A recount is conducted by the County Elections Official for the purpose of verifying the number of votes counted for any office or measure in an election. California Elections Code §§15620 through 15634 governs voter-requested recounts. This guide addresses voter-requested recounts. Court-ordered recounts are addressed in EC §§15640-15642; State-ordered recounts are addressed in EC §§15645-15649. Division 16 of the Elections Code addresses election contests which are filed through the courts.

WHO CAN REQUEST A RECOUNT?

Any voter may file a request.
(E.C. §15620)

TIMING OF RECOUNT REQUEST

LOCAL OFFICES/MEASURES: The request must be filed within five days after the completion of the official canvass. The canvass is complete when the County Elections Official signs the *Statement of Election Results* or the *Certificate of Election*.
(E.C. §15620)

STATEWIDE OFFICE: Following completion of the official canvass, any voter may, within five days beginning on the 29th day after a statewide election, file with the Secretary of State a written request for a recount of the votes cast for a candidate for any statewide office or for or against any measure voted on statewide. The request shall specify in which county or counties the recount is sought and shall specify on behalf of which candidate, slate of electors, or position on a measure (affirmative or negative) it is filed.
(E.C. §15621)

FORMAT OF RECOUNT REQUEST

- The request must be in writing.
(E.C. §15620)
- The request must specify the contest to be recounted.
(E.C. §15620)
- The request must state on behalf of which candidate, slate of electors, or position on a measure (affirmative or negative) it is filed.
(E.C. §15620)

- The request may specify order in which precincts shall be recounted.
(E.C. §15622)
- The request may specify the method of counting to be used (voting system originally used, manual (hand count), or both).
(E.C. §15627)
- The request may specify any other relevant material to be examined.
(E.C. §15630)

PLACE OF FILING

- The request for a recount must be filed with the County Elections Official responsible for conducting the election, if the contest is not voted upon statewide.
(E.C. §15620)
- If an election is conducted in more than one county, the request may be filed with the County Elections Official of, and the recount conducted within, any and all of the affected counties.
(E.C. §15620)
- If the election is conducted in more than one county (a shared jurisdiction or district), the recount request must be made directly to the County Elections Official of that county. A separate request must be filed with each county.
- If the contest is voted upon statewide, the request for a recount must be filed with the Secretary of State.
(E.C. §15621)

NOTICE OF RECOUNT

A notice stating the date and place of the recount will be posted by the County Elections Official at least one day prior to the recount and the following persons will be notified in person or by federally regulated overnight mail service:

- All candidates for the office being recounted.
- Authorized representatives of presidential candidates, to whom electors are pledged, if the race for presidential electors is to be recounted.
- Proponents of any initiative or referendum or persons filing ballot arguments for or against any initiative, referendum, or measure to be recounted.
- The Secretary of State if the recount is for candidates of any state or federal office, presidential electors, delegates to a national convention, or any state measure.
(E.C. §15628)

Once the recount board schedule is set and posted in the Registrar of Voters office, the recount shall commence daily in accordance with the schedule, regardless of the presence of the candidates or representatives.

PROCESS OF RECOUNT

- The recount is open to the public.
(E.C. §15629)
- Recount shall start no later than seven days following the receipt of the request and shall be continued daily for not less than six hours each day until completed. Saturdays, Sundays, and holidays are not included.
(E.C. §15626)
- A recount must be conducted under the supervision of the County Elections Official by recount boards, consisting of four voters of the county, appointed by the County Elections Official.
(E.C. §15625)
- Each candidate and representative will sign in on the recount visitor log and wear an Elections Division name tag indicating their name and the represented candidate or measure position supported. In the case of a public health emergency, the County may require observers to follow procedures related to hygiene and distancing.

Candidates and representatives may not enter the recount board security area with briefcases, purses, photography/filming/recording/computer equipment, backpacks, cell phones, or water/soda/juice/coffee. Filming or photography of the recount may be taken from outside the security area.

DURING A MANUAL RECOUNT, each candidate in the contest being recounted or one proponent for and one against a measure, may designate up to two representative observers for each of the recount boards. One representative per candidate/proponent per board may challenge the board's decision on a specific ballot interpretation consistent with the Secretary of State procedures as to what constitutes a vote.

In the event of a vote challenge, the recount board will note the decision of the board by attaching a separate sticky-note on the ballot. No marking or adjustment of the ballot is allowed. Ballot challenges will be resolved in public by the Registrar of Voters each afternoon during the recount at 4:00 p.m., in the Registrar of Voters office.

DURING A MACHINE RECOUNT, ballots will be scanned and adjudicated on Verity Central workstations using a Verity Data certified copy of the election database. Ballots will be tabulated and reported on Verity Count workstations

Candidates and representatives may only view the recount process through the designated area. Access is not permitted for persons other than authorized Registrar of Voters staff per the Secretary of State.

Each candidate in the contest being recounted or one proponent for and one against a measure, may designate up to two representative observers for each of the adjudication workstations operated by the adjudication staff. One representative per candidate/proponent per board may challenge the adjudication decision on a specific ballot interpretation consistent with the Secretary of State procedures as to what constitutes a vote.

In the event of a vote challenge, the recount board will note the decision of the board by flagging and locking the ballot under review using the Verity Central interface. Ballot challenges will be resolved in public by the Registrar of Voters each afternoon during the recount beginning at 4:00 p.m. at the adjudication workstation.

RESULTS OF RECOUNT

The results of a recount are declared null and void unless every vote in every precinct in which the contest appeared is recounted.

(E.C. §15632)

Upon completion of a recount (every precinct in the jurisdiction has been counted), if a different candidate was shown to nominated or elected, or that a measure was defeated instead of approved or approved instead of defeated, the results of the recount shall be the official returns. If the election outcome does not change (winner/loser) then the results of the official canvass remain in effect.

(E.C. §15632)

A copy of the results of any recount conducted shall be posted conspicuously in the office of the County Elections Official.

(E.C. §15633)

COST AND PAYMENT

The County Elections Official shall determine the amount of deposit necessary to cover the costs of the recount for each day.

(E.C. §15624)

The voter filing the request for recount is responsible for the entire recount cost. A deposit must be made before the recount commences and at the beginning of each

following day (for the recount to take place the next day), such sums as required by the County Elections Official to cover the cost of the recount for that day.
(E.C. §15624)

Upon completion of the recount, only if the outcome changes, from loser to winner of the contest all of the deposit shall be returned.
(E.C. §15624)

OTHER TOPICS RELATED TO RECOUNTS, TALLIES AND CONTESTS

POST-ELECTION MANUAL TALLY

By law, a random sample of ballots from every election must be recounted manually to verify the computer count. A minimum of all votes cast in one percent of the precincts is included in this process. The post-election manual tally is open to the public and is completed prior to certification of the election results. The results of the post-election manual tally are available to the public.
(E.C. §15360)

ELECTION CONTESTS

Any voter may contest any election for any of the following reasons:

- a) That the precinct board or any member thereof was guilty of malconduct.
- b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office.
- c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined in Division 18 (commencing with Section 18000).
- d) That illegal votes were cast.
- e) That eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote.
- f) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected.
- g) That there was an error in the vote-counting programs or summation of ballot counts

(E.C. §16100)

Any candidate at a primary election may contest the right of another candidate to nomination to the same office by filing an affidavit alleging any of the following grounds:

- a) That the defendant is not eligible to the office in dispute.
- b) That the defendant has committed any offense against the elective franchise defined in Division 18 (commencing with Section 18000).
- c) That a sufficient number of votes were illegal, fraudulent, forged, or otherwise improper, and that had those votes not been counted, the defendant would not have received as many votes as the contestant.
- d) That a sufficient number of eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote, and that had those voters been permitted to vote, the defendant would not have received as many votes as the contestant.
- e) That due to mistake, error, or misconduct the votes in any precinct were so incorrectly counted as to change the result.

(E.C. §16101)

CONTESTS INVOLVING A RECOUNT

Contests on the ground that due to mistake, error, or misconduct the votes in any precinct were so incorrectly counted as to change the result.

(E.C. §16460)

PROCESS FOR CONTESTING ELECTION RESULTS

The affidavit shall be filed in the office of the clerk of the superior court within five days after the completion of the official canvass. Upon the filing of the affidavit the county elections official shall forthwith post, in a conspicuous place in his or her office, a copy of the affidavit. Upon the filing of the affidavit and its posting, the superior court of the county shall have jurisdiction of the subject matter and of the parties to the contest. The contestant on the date of filing the affidavit shall send by registered mail a copy thereof to the defendant in a sealed envelope, with postage prepaid, addressed to the defendant at the place of residence named in the affidavit of registration of the defendant, and shall make and file an affidavit of mailing with the county elections official, which shall become a part of the records of the contest.

(E.C. §16462)