



NUMBER 13-25-00622-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**CITY OF KINGSVILLE, TEXAS,
NORMA NELDA ALVAREZ,
HECTOR M. HINOJOSA, AND
LIONEL 'LEO' H. ALARCON**

Appellants,

v.

SELINA TIJERINA,

Appellee.

**ON APPEAL FROM THE 105TH DISTRICT COURT
OF KLEBERG COUNTY, TEXAS**

MEMORANDUM OPINION

**Before Chief Justice Tijerina and Justices Peña and West
Memorandum Opinion by Justice Peña**

This case concerns the Charter of the City of Kingsville (Charter) and whether appellee Selina Tijerina complied with its requirements to force a recall election of three city commissioners. Appellants the City of Kingsville, Texas, Norma Nelda Alvarez,

Hector M. Hinojosa, and Lionel “Leo” H. Alarcon appeal from the trial court’s granting of Tijerina’s petition for writ of mandamus—which ordered the city commission to set a date for a recall election pursuant to the Charter. Appellants argue, among other things, that the trial court erred in issuing the writ because Tijerina’s petition was untimely filed. Because Tijerina filed her recall petition one day after the Charter’s mandatory deadline, we hold that the trial court abused its discretion in issuing the writ.¹

I. RECALL PROVISIONS

Kingsville is a home-rule city, and its voters have adopted a home-rule charter. See TEX. CONST. art. XI, § 5; see *also* TEX. LOC. GOV’T CODE § 51.072. “A home-rule city’s charter is its organic act; it is the fundamental law of the municipality just as a constitution is the fundamental law of a state.” *Tex. River Barges v. City of San Antonio*, 21 S.W.3d 347, 354 (Tex. App.—San Antonio 2000, pet. denied). The Charter’s recall procedure requires qualified voters to make and file with the city secretary an affidavit containing the name or names of the officer(s) whose removal is sought and a statement of removal grounds. Kingsville, Tex., Charter, pt. 1, art. II., § 24(3). After the affidavit is filed, the city secretary has two days to make available printed petition blanks to the affiant. *Id.* The Charter also contains a deadline for filing the recall petition and the process if said petitions are certified by the city secretary:

All papers comprising a recall petition shall be returned and filed with the . . . City Secretary within thirty (30) days after the filing of the affidavit hereinbefore provided for. The . . . City Secretary shall certify said petitions within fifteen (15) days of receipt and present such certified petitions to the City Commission at the next regular City Commission meeting. If the officer whose removal is sought does not resign within five (5) calendar days after such notice is given, then it shall become the duty of the City Commission to order an election and fix a date for holding such recall election

¹ We do not address appellants’ other arguments because the failure to timely file is dispositive. See TEX. R. APP. P. 47.1.

Id. § 24(6). The Charter further provides that:

In case all of the requirements of this Charter shall have been met and the City Commission shall fail or refuse to receive the recall petition, or to order such recall election, or to discharge any other duties imposed upon said City Commission by the provisions of this Charter with reference to such recall, then the District Judge of Kleberg County, Texas, or other judge of competent jurisdiction shall discharge any such duties herein provided to be discharged by the person performing the duties of City Secretary or by the City Commission.

Id. § 24(7).

II. BACKGROUND

On May 6, 2025, Tijerina notarized and delivered to the City Secretary Mary Vaenzuela an affidavit seeking to recall three city commissioners—appellants Alvarez, Hinojosa, and Alarcon. The top right corner of the affidavit was marked “received” on May 6, 2025, at 2:23 p.m. On May 7, the petitions were released to Tijerina, and she signed a form from the city acknowledging that “as of the date of this document, [she has] thirty (30) days to obtain the signatures required . . . and submitted to the City Secretary by the allotted time.”

On June 6—thirty-one days after her affidavit was received—Tijerina returned the recall petitions to the city secretary. On June 23, the city secretary informed the city commission that she had received the recall petitions and that she had certified a sufficient number of signatures. The city secretary explained that if the three commissioners did not resign by June 28, it would become the duty of the city commission to order a recall election. *See id.* § 24(6). The three commissioners did not resign by the deadline, and the issue was placed on the city commission’s regular meeting agenda held on July 14. At the July 14 meeting, the city secretary affirmed that she certified the

signatures according to the election code and the Charter. The city commission voted 3-2 to reject the recall petition (with the rejecting votes cast by the targeted city commissioners) and to refuse to set a recall election.

On August 13, Tijerina filed a petition for writ of mandamus with the district judge of Kleberg County. Tijerina alleged that the city commission had refused to perform a ministerial duty under the Charter and requested that the district court issue a writ ordering the city commission to schedule and conduct a recall election. Appellants filed answers generally denying all allegations and raising affirmative defenses, including that they are not subject to mandamus because the Charter's petition deadline passed.

A hearing on the matter was held on October 14. City Secretary Valenzuela testified that to her knowledge, Tijerina did everything needed for the city commission to hold a recall election. Valenzuela explained, that to her understanding, while Tijerina's affidavit was received on May 6, the petitions were released on May 7—from which point Tijerina had thirty days to return the petition. Valenzuela later agreed that the affidavit being marked as "received" on May 6 was the day it was "filed." Sam Fugate, the mayor of Kingsville, testified that he did not have any concerns with the city secretary's certification and believed it would be a violation of the Charter for him to vote against the recall election. Appellant Norma Alvarez testified that she voted against the recall election because Tijerina "did not turn in the petitions in the correct time frame." At the conclusion of the hearing, the judge stated: "I am going to order that the date started May 7th and continued for 30 days and that this recall petition was filed on time, and I am going to issue a writ[] of mandamus at this time." The trial court's written order was signed October

29 and provided that the city commission must fix a date for the recall election—which is scheduled for May 2, 2026. This appeal followed.

III. STANDARD OF REVIEW

A writ of mandamus is traditionally an extraordinary remedy that will issue only to compel a public official to perform a purely ministerial act. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). “An act is ministerial when the law clearly spells out the duty to be performed with such certainty that nothing is left to the exercise of discretion.” *Schroeder v. Escalera Ranch Owners’ Ass’n*, 646 S.W.3d 329, 332 (Tex. 2022) (quoting *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991)). In recent decades, Texas courts use the writ to correct “clear abuse of discretion” committed by a trial court. *Walker*, 827 S.W.2d at 839. “A trial court clearly abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *Id.* (citation modified). However, this standard has different applications in different circumstances. “With respect to resolution of factual issues or matters committed to the trial court’s discretion, for example, the reviewing court may not substitute its judgment for that of the trial court.” *Id.* (citation omitted).

On the other hand, review of a trial court’s determination of the legal principles controlling its ruling is much less deferential. A trial court has no ‘discretion’ in determining what the law is or applying the law to the facts. Thus, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion.

Id. at 840. (citations omitted).

IV. DISCUSSION

Appellants contend that the trial court erred in granting mandamus because the recall petition failed to comply with mandatory charter requirements—specifically, the

thirty-day filing deadline for recall petitions. Appellants argue that Tijerina's untimeliness was fatal and therefore the city commission had no duty to act. Tijerina argues that (1) the Charter is ambiguous concerning the deadline and the trial court reasonably relied on Kingsville officials' interpretation of the Charter, and (2) appellants had a ministerial duty to act once the city secretary certified the recall petitions.

"The power of initiative and referendum, as provided for in the city's charter, is the exercise by the people of a power reserved to them, and not the exercise of a right granted." *In re Woodfill*, 470 S.W.3d 473, 480 (Tex. 2015) (original proceeding) (citation modified). As the Texas Supreme Court emphasized over one hundred years ago, the power of recall is an essential component to our republican form of government:

With the recall provision in the charter, the people are still invested with the sovereign power of the municipality, and they are [e]ntrusted with the selection of their representatives, who are to administer the city government. It occurs to us that there is a greater degree of sovereignty with the people with the recall of their representatives than would otherwise be the case; in fact, the right of recall asserts in a larger degree the right of representation; that is, representation in fact of the will and wishes of the voters.

Bonner v. Belsterling, 138 S.W. 571, 574 (Tex. 1911). Mindful of the significance of recall power to the citizens of Kingsville, we must determine whether the Charter's deadline is ambiguous and whether Tijerina filing her recall petition thirty-one days after her affidavit was filed triggered a ministerial duty on part of the city commission to resign or hold an election. See Kingsville, Tex., Charter, pt. 1, art. II., § 24(6) ("All papers comprising a recall petition shall be returned and filed with the . . . City Secretary within thirty (30) days after the filing of the affidavit hereinbefore provided for."). It is necessary for us to apply rules of statutory construction to resolve the issue at hand.

A. Rules of Statutory Construction

Statutory construction is a question of law that we review de novo. *Atmos Energy Corp. v. Cities of Allen*, 353 S.W.3d 156, 160 (Tex. 2011). “We construe a city charter provision according to the rules governing the interpretation of statutes generally.” *In re Arnold*, 443 S.W.3d 269, 274 (Tex. App.—Corpus Christi—Edinburg 2014, orig. proceeding); *Rossano v. Townsend*, 9 S.W.3d 357, 363 (Tex. App.—Houston [14th Dist.] 1999, no pet.). “Our interpretation must be fair, rational, reasonable, and with a view accompanying the enacting body’s intent and purpose.” *City of Houston v. Todd*, 41 S.W.3d 289, 297 (Tex. App.—Houston [1st Dist.] 2001, pet denied) (citing *Rossano*, 9 S.W.3d at 363 (Tex. App.—Houston [14th Dist.] 1999, no pet.)). While we liberally construe charter provisions, the power of initiative may be expressly or impliedly limited by the charter. *Quick v. City of Austin*, 7 S.W.3d 109, 124 (Tex. 1998).

“Our objective in construing a statute is to determine and give effect to the intent of the lawmaking body.” *Todd*, 41 S.W.3d at 297–98. “In so doing, we look first to the plain and common meaning of the statute’s words.” *Id.* at 298. When the words chosen are not defined in the charter, we assign them their ordinary meaning unless a different meaning is apparent from the context. *Jones v. Whitmire*, 691 S.W.3d 685, 694 (Tex. App.—Houston [14th Dist.] 2024, pet. denied); see TEX. GOV’T CODE § 311.011(a) (words and phrases are to be construed according to the rules of grammar and common usage). “Further, we consider the entire statute, not simply the disputed portions.” *Todd*, 41 S.W.3d at 298. “Each provision must be construed in the context of the entire statute of which it is a part.” *Id.* “We also should not adopt a construction that would render a law or provision absurd or meaningless.” *Id.*

B. Analysis of Charter Provisions

Appellants argue that there is nothing ambiguous about the Charter’s filing deadline. Tijerina disagrees and argues that the trial court relied on reasonable interpretations from Kingsville officials. Section 24(6) of the Charter states: “All papers comprising a recall petition shall be returned and filed with the . . . City Secretary *within thirty (30) days after the filing of the affidavit* hereinbefore provided for.” Kingsville, Tex., Charter, pt. 1, art. II., § 24(6) (emphasis added). The plain meaning of section 24(6) makes apparent that once the affidavit is filed, the affiant has thirty days to return the recall petition. It is undisputed that Tijerina delivered her affidavit to the city secretary on May 6 when it was marked as “received.” City Secretary Valenzuela testified that her receipt of Tijerina’s affidavit on May 6 was, for purposes of the Charter, the day it was filed. This accords with the ordinary meaning and common usage of “file.” See *Chau v. Select Med. Corp.*, 582 S.W.3d 413, 419 (Tex. App.—Eastland 2018, pet. denied) (“Generally, a document is ‘filed’ when it is tendered to the clerk, or otherwise put under the custody or control of the clerk.” (quoting *Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993))); *File*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining “file” as “to deliver a legal document to . . . record custodian for placement into the official record”).

With Tijerina’s affidavit filed on May 6, 2025, the Charter mandates that the papers comprising the recall petition be returned and filed *within* thirty days. See Kingsville, Tex., Charter, pt. 1, art. II., § 24(6). Excluding the day of the event from which the time is measured—the filing of the affidavit on May 6—and counting thirty days, Tijerina was required to file the recall petitions by June 5, 2025. This follows general rules of time computation for election contests in home-rule cities. See *Apache Corp. v. Apollo Expl., LLC*, 670 S.W.3d 319, 328–29 (Tex. 2023) (“[W]hen time is to be computed *from or after*

a certain day or date, the designated day is to be excluded and the last day of the period is to be included *unless a contrary intent is clearly manifested by the contract.*”); *Nunn v. New*, 226 S.W.2d 116, 118–19 (Tex. 1950) (holding that Rule 4 of the Texas Rules of Civil Procedure is inapplicable to election contests in home-rule cities and determining a recall petition filed thirty-one days after the affidavit was untimely); *Hinojosa v. Longoria*, 381 S.W.2d 140, 140 (Tex. App.—San Antonio 1964, writ dismissed) (holding an election contest was timely filed after exclusion of the day of the event from which time is measured).

The inclusion of the thirty-day deadline indicates an intent by the Charter’s drafters to preclude recall petitions that are untimely filed. It is undisputed that Tijerina returned the recall petitions to the city secretary on June 6, 2025—*thirty-one days* after she filed her affidavit. The subsequent duties of the city secretary to certify the petitions and the city commission to resign or order an election never arose because a basic requirement of the Charter was not met—“said petitions” were untimely filed. See, e.g., *In re Miller*, 641 S.W.3d 924, 929 (Tex. App.—Fort Worth 2022, orig. proceeding) (holding that once relator complied with the procedural requirements of the election code, the real party in interest had a ministerial duty to place relator’s name on a ballot); *Barrett v. City of Dallas*, 490 S.W.2d 605, 607 (Tex. App.—Dallas 1973, no writ) (holding that a charter provision which required plaintiffs to file written notice of injury within thirty days after the injury to the city is “mandatory” and “a condition precedent”). Because the record clearly establishes that Tijerina filed her petition on the thirty-first day and the Charter’s deadline is unambiguous, the trial court erred when it determined that “the date[] started May 7th and continued for 30 days.”

Despite the timing defect, Tijerina argues that without seeking affirmative relief, appellants had a ministerial duty under the Charter to resign or hold a recall election once the city secretary certified the recall petitions. Appellant cites to *In re Woodfill* for support:

Faced with the City Secretary's certification, the City Council had no discretion but to repeal the ordinance or proceed with the election process. If the City Council believed the City Secretary abused her discretion in certifying the petition or otherwise erred in her duties, it was nevertheless obligated to fulfill its duties under the Charter and thereafter seek any affirmative relief to which it might be entitled.

470 S.W.3d at 480. However, *Woodfill* and other cases cited are distinguishable.² In *Woodfill*, the Houston city secretary certified citizens' petitions pursuant to the city charter which then required the city council to repeal a contested ordinance or set it on the next election ballot. *Id.* at 478–79. The city council refused, alleging that there were not a sufficient number of signatures. *Id.* at 478. The Texas Supreme Court held that the charter gave the city secretary, not the city council, the discretion to evaluate the petition and thus a ministerial duty arose to repeal the ordinance or set it on the next election ballot. *Id.* at 479. We agree that the Charter contains no language giving appellants the ability or discretion to evaluate the *sufficiency* of the petition. See *id.* However, unlike the number of signatures or the specificity of removal grounds, a thirty-day deadline is not a matter of sufficiency. See *id.* at 481 (ordering the city council to comply with duties specified in the charter “that arise when the City Secretary certifies that a referendum petition has a sufficient number of valid signatures”); *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291

² Further explained below, the other cases cited by Tijerina only involve disputes about the “sufficiency” of petitions rather than untimely filed petitions. See *In re Lee*, 412 S.W.3d 23, 25 (Tex. App.—Austin 2013, orig. proceeding) (recall allegations contested); *In re Suson*, 120 S.W.3d 477, 479 (Tex. App.—Corpus Christi—Edinburg 2003, orig. proceeding) (number of signatures contested); *Duffy v. Branch*, 828 S.W.2d 211, 214 (Tex. App.—Dallas 1992, orig. proceeding) (recall allegations contested); *Howard v. Clack*, 589 S.W.2d 748, 750 (Tex. App.—Dallas 1979, orig. proceeding) (number of signatures contested).

S.W.3d 392, 403 (Tex. 2009) (“A deadline is not something one can substantially comply with. A miss is as good as a mile.”); *Nunn*, 226 S.W.2d at 117 (“The failure to file in time is not a defect which may be corrected in any manner except by the filing of a new petition under the terms of the charter.”); *Victoria Gardens of Frisco v. Walrath* 257 S.W.3d 284, 290 (Tex. App.—Dallas 2008, pet. denied) (construing “sufficiency” of an expert report to mean “the substance of a report that has been timely served” and concluding that “expanding ‘sufficiency’ to encompass timeliness would do impermissible violence to the plain language of the statute”).

As discussed above, Tijerina filing her petition on the thirty-first day was noncompliant with the plain language of the Charter. Under Tijerina’s position, a city secretary could certify a recall petition that was three months late, and the city commission would *still* have a ministerial duty to resign or hold an election and thereafter seek judicial relief. Such a construction of section 24(6) could result in the citizens of Kingsville forced to expend unnecessary litigation costs to resolve clear legal error and would render section 24(7)’s requirement that “all of the requirements of this Charter shall have been met” useless or of no import. See *Todd*, 41 S.W.3d at 298 (“We also should not adopt a construction that would render a law or provision absurd or meaningless.”); *Quick*, 7 S.W.3d at 124 (explaining that “the initiative power may be either expressly or impliedly limited by the city charter” but that “such a limitation will not be implied unless the provisions of the charter are clear and compelling”); see also *United States v. Locke*, 471 U.S. 84, 101 (1985) (“Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be

enforced. Any less rigid standard would risk encouraging a lax attitude toward filing dates.”).

In sum, the Charter’s plain language requires recall petitions to be filed within thirty days. See Kingsville, Tex., Charter, pt. 1, art. II., § 24(6). Tijerina failed to comply when she returned the recall petitions on June 6—thirty-one days after her affidavit was filed. Despite clear evidence in the record and unambiguous Charter language, the trial court determined Tijerina’s affidavit was timely filed. Therefore, the trial court abused its discretion in issuing the writ because the court failed to correctly apply the Charter. See *Walker*, 827 S.W.2d at 840. We sustain appellant’s issue.

III. CONCLUSION

The judgment of the trial court issuing the writ of mandamus is reversed and the writ of mandamus is dissolved.

L. ARON PEÑA JR.
Justice

Delivered and filed on the
12th day of March, 2026.