



Frequently Asked Questions: COVID-19 and April Elections

Information surrounding COVID-19 is rapidly changing, and we will do our best to update the FAQ quickly as the latest information becomes available.

Can a town or city cancel or postpone their April election?

Home rule: Home rule municipalities may have language in their charters that would allow for the cancellation or postponement of elections due to emergency. Home rule municipalities should consult with their municipal attorney to determine what powers their charters grant.

Statutory: Beyond the 64-day deadline for cancellation set forth in C.R.S. 31-10-507, the Colorado Municipal Election Code contains no option for postponement or cancellation. While local officials are authorized to move the location of an election due to emergency, there is no procedure under state law for a statutory town to either cancel or postpone their regular election date due to emergency.

Does the Secretary of State have the authority to cancel or postpone municipal elections?

The Colorado Secretary of State has no express or implied authority over municipal elections that are not coordinated with a county, and thus does not have the ability to grant permission for a town or city to postpone or cancel their election.

Can Governor Polis' "stay at home" orders impact municipal elections?

The "stay at home" order issued by Governor Polis and CDPHE contains a list of exceptions for business and activities that are allowed to continue "normal" operations. Included in this are exceptions related to governmental operations associated with maintaining essential government services and the basic "functionality" of the government. Voting or conducting a municipal election falls under the category of essential government functions and CML does not interpret this executive order as impairing the ability of municipalities to complete their April 7 elections.

Can county public health "stay at home" orders impact municipal elections?

“Stay at home” or “shelter in place” orders are increasingly being issued by state and local public health agencies in Colorado and throughout the country. These orders always contain a list of exceptions for activities and locations that are deemed to be “essential” or “critical.” In stay at home orders issued so far in Colorado there are typically exceptions for government buildings and functions considered essential. Voting or conducting a municipal election falls under the category of essential government functions and therefore would not be impacted by these orders.

What can municipalities do to reduce the threat of COVID-19 spread during polling place elections?

Municipalities holding polling place elections can and should encourage citizens to request absentee ballots in advance of Election Day. If you must have a polling place election, practice social distancing of 6 feet or more whenever possible and have hand sanitizer, gloves etc. available on site. Place tape on the floor in 6 foot increments for social distancing for queuing. Election judge stations should be spaced 6 feet apart and privacy booths, tables, or chairs with clipboards should be 6 feet apart. The U.S. Centers for Disease Control (CDC) has recommended that municipalities consider the option of using drive-through polling places to enhance the safety of poll workers. For more information about CDC Election Day advice, go here: <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

For municipalities considering conducting a drive through ballot drop off outside of their municipal building, please note that ballot boxes must be secure and monitored at all times. If you are holding a mail ballot election and your ballot box would normally be located inside your municipal building, municipalities may want to consider working with the county clerk to take advantage of their secured outdoor mail ballot drop box. Clerks conducting a drive through ballot drop off may also want to consider having a plan in case there is inclement weather and engaging law enforcement in the event that an outdoor ballot drop off requires traffic mitigation.

Some clerks have indicated they plan on letting only one person into their polling place at one time, using separate doors for entry and exit.

Can municipalities issue absentee ballots to citizens who request them after the deadline?

Clerks who are encouraging the use of absentee ballots will likely continue to get requests for absentee ballots after the normal deadline for filing a written request for an absentee ballot, not later than the close of business on the Friday immediately preceding such regular or special election. In C.R.S. 31-10-1010 (1)-(3), there is a provision for issuing an emergency absentee ballot after the deadline for has passed.

Can clerks send absentee ballots to all voters?

If the deadline has passed to change your election from a polling place to a mail ballot election, clerks could choose to send all voters absentee ballot applications which, when they return them, will then allow you to send them absentee ballots. If you take this route, and you must do it quickly, you need to send them instructions on what to do, when to return both the application forms and their ballots. We also suggest you alert them that if their ballots arrive after the Wednesday or Thursday before the

election, there may not be enough time for them to mail them back so they are in the office by 7 p.m. on Election Day. An example of what you could choose to send to citizens is below.

[Date]

Dear Voter,

Due to the ongoing health concerns brought on by the COVID-19 pandemic, the [Insert Governing Body] and I are continuously working towards protecting the health and safety of you, our residents, and for the [city/ town] staff during the upcoming election.

As you know the [city/ town] usually holds polling place elections. In light of the recent events surrounding the COVID- 19 pandemic we would like to strongly encourage all voters, especially vulnerable populations, to take advantage of absent voter ballots available for the election on April 7.

Please find enclosed in this letter an application for absent voter ballot. If you would like vote absentee, please fill out this application. Then, either mail or bring it to [insert address] by March 31st, so that there will be enough time to mail and receive your ballot.

Please note that, while absentee voter applications can by law, be received by the close of business on the Friday before the election, I cannot guarantee that your ballot will be received by the 7:00 p.m. deadline on April 7. So, the sooner you can return your application and mail in your ballot, the better chance you will have for your vote to count.

While we are encouraging absentee voting, polls will be open on Apr 7, 2020, from 7:00 a.m. to 7:00 p.m. for persons wishing to vote in person.

Thank You,

[Name] /Town Clerk

If a voter completes the absentee application at the clerk's counter, can they vote the ballot right then and there and deposit it into the ballot box without the use of the envelopes or secrecy sleeves in the same manner as they would on election day?

Strict interpretation of the mail ballot statutes requires that there be a separate absentee ballot poll book, that the absentee ballots be kept in their envelopes and delivered to the judges separately along with the book, and also counted separately from the ballots voted on during election day.

Some municipalities are choosing to use the "Drive-In voting" method for absentee voters. The clerk brings the absentee application out to a voter in their car, the voter completes it in their car and the clerk brings it back in, prepares the ballot, brings the ballot out to the voter in their car and lets them vote in the car, place the ballot in the envelope, seal the envelope, and sign the affidavit on the back of the envelope. The clerk then brings it back in and deposits it in the ballot box. The affidavit of absentee voter should contain the language as required in C.R.S. 31-10-1002 (2).

If I'm out of absentee ballots, what can I do?

If you don't have 'real' absentee ballot envelopes at this point, you can use a regular envelope, make a large label that can be placed on the back of the return envelope. This label should contain the language of the affidavit of voter as shown in C.R.S. 31-10-1003.

Do we have to open our Town Hall for elections if it is closed due to the coronavirus?

No, C.R.S. 31-10-502 allows the governing body of each municipality to decide the location of polling places. If you do not have an alternative location to hold the election, then you may be required to open the Town Hall at least partially to allow the election to take place.

Please note that C.R.S. 31-10-501 requires municipal clerks, at least 10 days before the election, to give notice of the designated polling place of each precinct, in addition to other election information. If the municipality needs to change the location last minute, this can be done by an election judge, who must follow the procedures outlined in C.R.S. 31-10-503.

Our only ballot drop box is inside our town hall which is closed. How can we make this available?

If you are holding a mail ballot election and your ballot box would normally be located inside your municipal building which is closed, municipal governing bodies may want to consider changing the location of the polling place. If practical, municipalities could work with the county clerk to take advantage of their secured outdoor mail ballot drop box.

If a municipality does postpone an election, do current elected officials continue to serve?

There is conflicting language in state law which makes the answer to this question somewhat unclear. As such, it is best to consult with your municipal attorney for guidance.

Are clerks required to provide in-person training to election judges?

C.R.S. 31-10-910.3 (7) requires that the clerks shall provide training to election judges who compare signatures in a mail ballot election. The statute does not require in-person training and clerks can take advantage of available technology to conduct a remote training. If a good training manual is available, clerks can also provide written materials for training to judges. Clerks can also postpone training dates until closer to Election Day.

What happens if election judges back out on or near Election Day?

In anticipation of a higher than average number of election judges in the high risk category opting to stay home on Election Day, clerks are encouraged to prepare ahead of time as much as possible by hiring alternate election judges now. Consider reaching out to community recreation facilities, or other facilities that have closed to the public but may have hourly staff looking for work.

If there is a situation in which an alternate judge needs to fill in on Election Day, clerks can train them the day of the election before they actually do the signature verification.

Are there requirements for outdoor ballot boxes?

Yes. The outdoor ballot boxes that the county clerks use are permanently affixed in place, usually bolted to a platform, capable of being locked when not in use, and under 24/7 camera surveillance during the time the box is open to accept ballots.

If municipalities are planning on moving ballot boxes outside of the building, and not using a county provided box, then it should be a receptacle that cannot be easily broken into. It must be watched at all times by someone, either via security camera surveillance, or a person physically sitting outside with it, or watching it through a window. It should also be secured so that no one can walk away with it. If possible, clerks should bring it inside the building and lock it up every night.

Are there resources or materials that the County Clerks are willing/required to provide?

Yes. If you're conducting a mail ballot election, you will need to contact your county clerk to request 'additional' registered electors since the date of the original list you received. Providing this list is required by statute.

CML has been advised that county clerks should still be available to help with verifying signatures of persons who are confidential voters just like they have done in the past.

CCCA is communicating with their counties about Election Day registration and communicating the phone/email contact procedure to municipalities if Election Day registration procedures have changed due to closures.

Just a reminder that email and phones are very busy right now at the county level as well, so please be patient on return emails or calls. If you have a deadline approaching for an advance request from county clerks, please request that as early as possible.

What can clerks do to ensure that ballot counting is done in a safe manner?

It's important to remember that canvassing does not have to be completed until 10 days after the day of the election. That means you have time to ensure that ballot counting is conducted in the safest way possible for all those involved.

In general, it is advisable to limit the time period your judges spend together counting ballots, assuming you can and are willing to take most of or the full 10 days. This way, while you can't avoid having your judges together in the same room, you can minimize the amount of constant time they spend with each other.

If possible, consider moving your ballot counting location to a room large enough to allow for the 6 foot social distancing between judges. And, if you are anticipating watchers, find a place 6 feet away where they can sit and still observe. For those conducting polling place elections, see if you can also separate your judges' stations, as well as the voting booths, in a manner to meet the distance requirements.

For those conducting signature verification in mail ballot elections, you are not required to have all three judges present at the same time. Judge #1 could make the first decision as to whether the signatures match and experience has shown that more than 90% of the ballots are matched in this first pass through. In the event that the first judge doesn't think the signatures match, the ballot can be set aside for review by the other two judges. Please remember that only one of the two judges has to state that the signatures match in order for the ballot to be counted, so it would be possible to bring in just one of the remaining two judges to review the signatures. If judge #2 determines the signatures match, then the ballot can be counted. If not, then bring in judge #3 to make the determination. If all the judges believe the signatures do not match, then the 'discrepant signature' letter and form is mailed to the voter and the ballot is only counted if the form is returned.

In this manner, you could bring in one judge at different times during the same day, which would reduce the potential exposure for your judges. Clerks could switch out the responsibilities over time, so that each judge has the opportunity to serve as judge #1.

A reminder to continuously update your governing bodies

As you implement any procedures that are different from those you would normally do, keep your mayor, attorney, administrator, etc. updated. Clerks may want to let the candidates and issue committee representatives know as well. The more you can tell them ahead of time, the better.

Who can I contact if I have a question?

If you have any questions regarding municipal elections and COVID-19 please contact Karen Goldman at charna48@comcast.net or Heather Stauffer at hstauffer@cml.org.

Where can I find more information?

- CML is tracking and constantly updating information related to COVID-19 and municipalities on our webpage [https://www.cml.org/home/topics-key-issues/coronavirus-\(covid-19\)](https://www.cml.org/home/topics-key-issues/coronavirus-(covid-19)).
- The Centers for Disease Control (CDC) is posting information about COVID-19 and polling place elections <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.
- The United States Postal Service (USPS) statement on COVID-19 <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm>.