



COLORADO  
MUNICIPAL  
LEAGUE

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# HOW TO SURVIVE A RECALL

## CML CONFERENCE, AUGUST 25, 2020

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COLORADO  
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# RECALL: LEGAL ASPECTS

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PRESENTED BY:

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# CONSTITUTIONAL PROVISIONS, ARTICLE XXI

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Every elective public officer may be recalled from office by the registered electors entitled to vote for a successor.

Recall is effected by the circulation of a recall petition.

Signatures on the petition shall equal, at a minimum, twenty-five percent (25%) of the ENTIRE VOTE cast at the preceding election for all candidates for the incumbent's position.

An elected official cannot be recalled until he/she has held office for at least six months.

Colorado Constitution also includes provisions for the form of the petition, when a recall election shall be held, and how to fill a vacancy should the officer subject to recall resign prior to a recall election.

The Colorado Constitution also gives municipalities the authority to provide for the manner of exercising recall powers. These can be found in 31-4-501 through 31-4-507, C.R.S.



# STATUTORY PROVISIONS, 31-4-501 THROUGH 31-4-507

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## Signature requirements

25% of the entire vote cast for all candidates in the last election when the person subject to recall` was on the ballot; varies among municipalities.

In elections where all candidates on a ballot are elected at-large, total vote is divided by number of positions to be filled multiplied by 25%.

In a recall involving an elected official who was appointed to fill a vacancy, the number of signatures is taken from the election at which the person whose vacancy is being filled was elected.



# STATUTORY PROVISIONS, 31-4-501 THROUGH 31-4-507

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## Petition Requirements

- Petition Committee consists of 3-5 persons who represent the signers of the petition in all matters.
- Each petition shall contain the name of only one person.
- A warning to the signers is listed at the top of each page of the petition.
- The petition includes the name of the person subject to recall.
- The petition includes a 200-word statement of the grounds on which the recall is sought.
- Signature pages are provided showing the signature, printed name, residence address, date of signing.
- Affidavit of circulator follows the signature pages.



# RECALL TIME FRAMES

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The form of the petition must be approved by the close of the second business day following submission of the proposed petition.

Petitioners must file the recall petition within sixty (60) days following the date on which the petition was approved as to form.

After the signed petition has been filed with the municipality, a written determination of petition sufficiency or insufficiency is filed by the close of the fifth business day.

A protest may be filed by a municipal registered elector within fifteen (15) days after the petition has been filed listing the grounds for protest.

A protest hearing shall be held no sooner than five (5) nor no later than ten (10) days after a notice regarding a protest has been sent. Such hearing shall be concluded within thirty (30) days after the petition has been filed and a written determination shall be filed no later than five (5) days after the petition has been filed.

If a petition has been deemed sufficient, the governing body shall set an election at their first meeting following the expiration of the protest period or at the conclusion of the protest hearing, whichever is later. Such election shall be held not less than thirty (30) nor more than ninety (90) days from the date the governing body received the recall petition.



# RECALL ELECTION PROVISIONS

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When setting the election date, the governing body also determines the form of the election, either polling place or by mail ballot.

If a regular municipal election is to be held within one hundred eighty (180) days after the date of petition submission, the recall is held as part of the regular municipal election.

If the elected official subject to recall intended to seek re-election at the regular municipal election, only the question of re-election shall be on the ballot.

If a successor candidate is to be selected at such regular election and the officer subject to recall is not seeking re-election, then the recall question shall not appear on the ballot.



# OTHER RECALL MATTERS

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If an elected official subject to recall submits a written resignation at any time prior to the recall election, all recall proceedings shall be terminated, and the vacancy in office shall be filled in accordance with statute.

Successor candidates shall be nominated by petition, in the same manner as for a regular municipal election. Petitions shall be made available on the first business day after the governing body sets the election date. Candidates have not less than ten (10) days to circulate nomination petitions.

In the case of a failed recall, municipalities may reimburse the elected official subject to recall for authorized expenses, including funds spent challenging the sufficiency of the recall petition and presenting his/her official position, including campaign literature and advertising.







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# RECALL: THE ROLE OF THE CLERK

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PRESENTED BY:

MIRANDA FISHER, NEDERLAND TOWN  
CLERK

# RESPONSIBILITIES OF THE MUNICIPAL CLERK

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The municipal clerk serves a vital role in the recall process. He/she serves as the main contact between the recall petition proponents and the elected official who is the subject of a recall effort.

## Recall responsibilities:

- Review the petition as to form, ensuring all elements required by statute, and none other, are included in the recall petition
- Identifies the minimum number of required signatures needed on a recall petition
- Once a petition has been submitted, reviews each signature to determine whether it is a qualified signature. Reasons for disqualification may include:
  - Person signing is not a resident of the town
  - Person signing is not registered
  - Name and address on petition does not match information in statewide voter registration database



# RESPONSIBILITIES OF THE MUNICIPAL CLERK

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- Reasons for disqualification may include (continued):
  - Signature line is missing the date of signing
  - Signature is illegible
  - More than one signature was made by the same person
  - Signature was made after the date the circulator made and signed his/her affidavit
- Clerk issues determination regarding the sufficiency or insufficiency of the recall petition and notifies the elected official of the determination.
- In the event a protest is filed within the statutory allotted time, sets the hearing date. The clerk shall serve as the hearing officer, unless another person is so designated by the governing body.
- In the event the recall petition is deemed to be insufficient following the determination of the clerk or the hearing officer, it may be withdrawn, signatures added, then refiled. The clerk once again reviews the petition and issues a determination.
- Clerk submits the petition to the governing body which sets a hearing date and determines the form of the election. The clerk provides information to the governing body of the procedures involved, whether the election can be held as part of a coordinated election or must be held as a special municipal election.



# RESPONSIBILITIES OF THE MUNICIPAL CLERK

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Once a recall election date has been set, clerk provides nomination petitions for potential successor candidates, sets the dates for petition circulation, and checks the signatures on the nomination petitions once they have been filed.

Clerk also performs all other duties involved in conducting an election, including certifying the ballot content to the county clerk (for coordinated elections), posting the notice of election, providing absentee ballot applications and ballots (for polling place elections), verifying signatures (mail ballot elections), counting ballots, and posting election results.





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# RECALL: THE PROTEST

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PRESENTED BY:

KAREN GOLDMAN, CML MUNICIPAL  
CLERK ADVISORY PROGRAM

# RECALL PROCEDURES

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Following the determination of the clerk regarding the sufficiency of the petition, either sufficient or insufficient, a protest may be filed by 'some' registered elector of the municipality within fifteen (15) days after the petition has been filed.

The grounds for the protest must be listed in it, and generally are not restricted.

Upon receipt of the protest, a hearing is set by sending out a notice to the elected official subject to recall, the recall petitioners, and the county clerk. The hearing is scheduled between the 5<sup>th</sup> and 10<sup>th</sup> day after the notice is sent.

The clerk serves as hearing officer, unless someone else is formally appointed to serve in that role by the governing body.



# RECALL PROCEDURES

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Hearing officer has the authority to issue subpoenas and to compel the attendance of witnesses.

The hearing is administrative in nature, which allows for a wide latitude in testimony. It concludes within thirty (30) days after the petition has been filed.

An insufficient recall petition, following determination by the clerk or hearing officer, may be withdrawn and refiled by:  
Adding any information to the signatures on the petition (not the date of signing); or  
Attaching proper circulator affidavits

Additional signatures cannot be submitted.

The finding of sufficiency may be reviewed by the district court of the county in which the municipality is contained.

A sufficient petition is submitted to the governing body at their first meeting after the protest expiration date or the conclusion of the protest hearing. The governing body's only option is to set the date of the recall election.



# ADDITIONAL RECALL PROCEDURES

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If the elected official subject to recall resigns at any time prior to the day of the election, the entire election, including the vote on successor candidates, is cancelled and the vacancy is filled in accordance with statute.

If the recall is one of many items on a ballot, the ballots have been printed, and the elected official resigns, then no votes cast on the recall shall be counted.

If the recall is successful, the successor candidate with the highest number of votes shall be declared elected for the remainder of the term.

Following one unsuccessful recall, an elected official may be recalled a second time and the number of minimum required signatures shall be 50% of the votes cast for that office.







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# RECALL: PROPOSED LEGISLATIVE CHANGES

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PRESENTED BY:

KAREN GOLDMAN, CML MUNICIPAL  
CLERK ADVISORY PROGRAM

# PROPOSED LEGISLATIVE CHANGES

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Amend 31-4-504(1)(c): Eliminate the requirement that, in order to vote on a successor candidate, a person must also vote on the question of the recall.

Clarify that the recall procedures apply to persons who have been appointed by the governing body to fill vacancies in office in addition to those elected by the citizens.

Add a provision that a person whose term office would end within six months is not subject to a recall.

