



Michelle Nauer, Ouray County Clerk and Recorder

RECALL ELECTION OUTLINE

The Ouray County Clerk and Recorder is providing the public with the following general information about the recall election process for partisan Ouray County elected officials. This material has been prepared for informational purposes only, is not exhaustive, and is not intended to provide, and should not be relied on for, legal advice. Anyone involved in a recall effort should consult their own legal advisors regarding the process and specific legal requirements.

NOTE: Differing requirements exist for recalls of school district officers and nonpartisan officers.

GENERAL RECALL REQUIREMENTS

Every elected officer of Colorado or any of its political subdivisions is subject to recall from office by the eligible electors entitled to vote for a successor to the incumbent. C.R.S. § 1-12-101.

- No recall petition may be circulated or filed against any elected officer until the officer has actually held office for at least six (6) months following the last election. C.R.S. § 1-12-102(1).
- No recall petition can be circulated or filed against any elected officer whose term of office will expire within six months. C.R.S. § 1-12-102(4).

Eligible electors may initiate the recall of an elected official by signing a petition which demands the election of a successor to the officer named in the petition. C.R.S. § 1-12-103.

- Generally, a petition to recall a county officer shall be signed by eligible electors equal to twenty-five percent (25%) of the entire vote cast at the last preceding General election (2018) for all candidates for the office which the incumbent sought to be recalled occupies. C.R.S. § 1-12-104(1).
- However, after one (1) recall petition and election, no further petition may be filed against the same county officer during the term for which the officer was elected, unless the petitioners signing the petition equal fifty percent (50%) of the votes cast at the last preceding general election for all of the candidates for the office held by the officer. C.R.S. § 1-12-102(2).

The Clerk and Recorder is the designated election official for county recall elections. C.R.S. § 1-12-107(2).

RECALL PETITION REQUIREMENTS

A recall petition must be prepared and circulated pursuant to the requirements of C.R.S. § 1-12-100.5 *et seq.*

A petition must contain a general statement, consisting of two hundred (200) words or less, stating the ground or grounds on which the recall is sought. The general statement may not include any profane or false statements. The statement is for the information of the electors who are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the ground or grounds assigned for the recall. The ground or grounds are not open to review. C.R.S. § 1-12-103.

No petition for recall of a County elected officer may be circulated until it has been approved as to form



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by the Clerk and Recorder. C.R.S. § 1-12-107(2); C.R.S. § 1-12-108(4).

To be approved as to form, the proposed petition must meet requirements set forth in statute. C.R.S. § 1-12-108.

The Clerk and Recorder must approve or disapprove a petition as to form by the close of the seventh (7th) *business* day following submission of the proposed petition. C.R.S. § 1-12-108(4)(a).

On the day the Clerk approves or disapproves the form, the Clerk will mail written notice of the action taken to the committee and to the person whom the petition seeks to recall. C.R.S. § 1-12-108(4)(a).

If the form of the petition is not approved as to form, the Clerk and Recorder must provide specific reasons for the disapproval. C.R.S. § 1-12-108(4)(b).

The recall committee submitting the petition may correct a petition as to form in accordance with the specific reasons set forth by the Clerk and Recorder and may re-submit the corrected petition for review and approval or disapproval in the same manner as for an original submission. C.R.S. § 1-12-108(4)(c).

No signature shall be counted that was placed on a petition: (1) prior to approval as to form of the petition by the Clerk and Recorder; or (2) more than sixty (60) days after the Clerk and Recorder approves the form of the petition. C.R.S. § 1-12-108(1.5).

It is against the law for anyone to sign a petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to knowingly sign the petition when not a registered elector. C.R.S. § 1-12-108(3)(b).

Only eligible electors may sign the petition. To be an eligible elector, one must be registered to vote and eligible to vote in Ouray County elections. C.R.S. § 1-12-108(3)(b) and (5)(a). See C.R.S. § 1-12-108(5) regarding signatures of person physically unable to sign their own signature.

Any signer may request that his or her name be stricken from the petition at any time prior to when the petition is deemed sufficient by the Clerk and Recorder and the time for protest has passed by filing a written request with the Clerk that his or her signature be stricken and delivering a copy of the request to at least one member of the committee. C.R.S. § 1-12-108(8)(d). As to the recall petition involving Sheriff Lance FitzGerald, the Clerk and Recorder, after consultation with the County Attorney and the Secretary of State, has determined that under C.R.S. § 1-12-108(9)(d)(I), a signer may request that his or her name be stricken from the petition by submitting an email to mnauer@ouraycountyco.gov subject to the following requirements:

- The email request must come directly from the signer; or
- If the email is sent by a second party on behalf of the signer, a written request from the signer must be attached to the second party's email. The Clerk and Recorder will not accept an email with a list of names to be stricken unless each listed name is accompanied by a written request from the petition signer
- A copy of the email and attachments, if applicable, must be provided to at least one member of the committee.

No petition shall be certified as sufficient that does not contain the requisite number of names of eligible



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electors. C.R.S. § 1-12-108(3)(a).

Any recall petition must be filed with the Clerk and Recorder who shall determine the sufficiency (or insufficiency) of the petition and call and conduct a recall election, if a petition is certified as sufficient. C.R.S. § 1-12-107(2).

No person may circulate a recall petition unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age. C.R.S. § 1-12-108(6)(a).

To each petition section must be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which includes the information and statements required for initiative or referendum petitions under C.R.S. § 1-40-111. C.R.S. § 1-12-108(6)(b). (The Clerk and Recorder cannot accept for filing any section of a petition that does not have attached to it the notarized affidavit. C.R.S. § 1-12-108(6)(c)).

Any signature added to a section of a petition after the notarized affidavit has been executed is invalid. C.R.S. § 1-12-108(6)(c).

The petition may be filed with the Clerk at any time during the sixty (60) day period after the Clerk and Recorder approves it as to form. The recall committee shall file all sections

of a petition simultaneously, and any section of a petition submitted after the petition is filed is invalid and has no force or effect. C.R.S. § 1-12-108(7.5).

CERTIFICATION OF SUFFICIENCY ONCE PETITION CIRCULATED & FILED

After signatures are gathered and the petition has been filed with the Clerk and Recorder, the Clerk must review all petition information and verify the information against the registration records, and, where applicable, the county assessor's records. C.R.S. § 1-12-108(8)(a).

Within twenty-four (24) hours after the petition is delivered, the Clerk must notify the incumbent of the delivery. C.R.S. § 1-12-108(8)(a).

Following verification of the petition by the Clerk and Recorder, a copy of the petition will be made available to the incumbent sought to be recalled. C.R.S. § 1-12-108(8)(a).

Any disassembly of a section of the petition prior to filing that has the effect of separating the circulator's affidavit from the signatures renders that section of the petition invalid and of no force and effect. C.R.S. § 1-12-108(8)(a).

No later than fifteen (15) *business* days after the initial filing of the petition, the Clerk and Recorder must notify the recall committee and the incumbent of the number of valid signatures received and whether the petition appears to be sufficient or insufficient. C.R.S. § 1-12-108(8)(c)(I).

When reviewing the petitions, the Clerk compares the information on the petition with the State voter registration record to ensure that the person's name and address at the time of signing the petition matches (i.e., strict compliance) the name and address for the person on the registration document at the county clerk and recorder's office and as it appears on the master elector list on file with the secretary of state. See C.R.S. § 1-1-104(35).

If the petition is determined to be insufficient, the Clerk and Recorder must provide the specific reasons



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for the determination to the recall committee. C.R.S. § 1-12-108(8)(c)(III).

The petition may be withdrawn and may be amended and refiled as an original petition within fifteen (15) days after the date on which the petition was verified as insufficient. A petition for recall may be amended no more than one (1) time to collect additional signatures or cure circulator affidavits after a designated election official issues a determination of insufficiency. C.R.S. § 1-12-108(8)(c)(II.5).

OR

The determination may be appealed to district court by the recall committee in the manner provided in C.R.S. § 1-1-113. No person other than those on the committee have standing to appeal a determination that the petition is insufficient. C.R.S. § 1-12-108(8)(c)(III).

If the Clerk verifies the petition, the petition will be held to be sufficient unless an eligible elector files a written protest within fifteen (15) days after the petition is deemed sufficient. C.R.S. § 1-12-108(9)(a)(I).

PROTESTS AND PROTEST HEARINGS

If the Clerk verifies the petition, any eligible elector may file a written protest, under oath, in the office of the office of the Clerk within fifteen (15) days after the petition has been found sufficient. C.R.S. § 1-12-108(9)(a)(I).

Any protest must set forth specific grounds for the protest. C.R.S. § 1-12-108(9)(a)(II).

Grounds include: failure of any portion of a petition or circulator affidavit to meet the requirements of this article or any conduct on the part of petition circulators that substantially misleads persons signing the petition. C.R.S. § 1-12-108(9)(a)(II).

While the Clerk must verify petition entries based on strict compliance, the hearing officer or court reviewing a protest applies a substantial compliance standard. See, e.g., *Loonan v. Woodley*, 882 P.2d 1380 (Colo. 1994).

Upon receipt of a protest, the Clerk and Recorder will mail a copy of the protest to the recall committee, together with a notice fixing a time for hearing the protest not less than five (5) nor more than ten (10) days after the notice is mailed. C.R.S. § 1-12-108(9)(a)(II).

The hearing shall be summary and not subject to delay and shall be concluded within thirty (30) days after the protest is filed with the Clerk and Recorder. C.R.S. § 1-12-108(9)(a)(III).

Every hearing shall be before the Clerk and Recorder or their designee. C.R.S. § 1-12-108(9)(a)(III).

A hearing date will be set by the Clerk and Recorder for each protest received, which hearing shall be held separately from all other protests received unless the hearing officer determines that questions of law or fact of two or more protests are the same or substantially similar and hearing the protests together would be fair and efficient.

The Clerk and Recorder or her designee will provide the party filing the protest and the recall committee with rules and process for conducting each hearing.

All testimony given in every hearing shall be under oath. C.R.S. § 1-12-108(9)(a)(III).

The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence.



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C.R.S. § 1-12-108(9)(b).

The result of the protest hearing shall be certified to the recall committee. C.R.S. § 1-12-108(9)(a)(III).

The decision upon matters of substance is open to review, if prompt application is made to the court, as provided in C.R.S. § 1-1-113. C.R.S. § 1-12-108(9)(b).

Upon determining that the petition is sufficient and after the time for protest has passed and any protests have been fully adjudicated, if the petition is held to be sufficient, the Clerk and Recorder will submit the certificate of sufficiency within twenty-four (24) hours, as appropriate. C.R.S. § 1-12-108(8)(c)(II).

The certificate shall be posted by the Clerk on their website certificate by 12 noon on the day after the day on which they issue the sufficiency determination. C.R.S. § 1-12-108(8)(c)(II).

RECALL ELECTION

If the officer (Lance FitzGerald) whose recall is sought does not resign within five (5) days after the sufficiency of the recall petition has been certified by the Clerk and Recorder and the time for protest has passed, the Clerk must call the election and set the election date. C.R.S. § 1-12-110(1).

If the officer whose recall is sought resigns at any time prior to the deadline to submit a petition as a successor candidate, the recall election shall be canceled. C.R.S. § 1-12-110(1).

If the officer (Lance FitzGerald) whose recall is sought resigns at any time after the deadline to submit a petition as a successor candidate, the recall election shall be called and held notwithstanding the resignation. C.R.S. § 1-12-110(2).

Generally, the “date for holding the election” shall not be less than thirty (30) nor more than sixty (60) days after the petition is deemed sufficient and the time for protest has passed or any protest has been fully adjudicated. C.R.S. § 1-12-111.

If, however, a general election is to be held within ninety (90) days after the petition has been deemed sufficient and the time for protest has passed and the time for such protest to be fully adjudicated has passed, the recall election must be held as a part of that election. C.R.S. § 1-12-111.

The “date for holding the election” is **NOT** election day. It is the first (1st) day on which recall ballots are made available to eligible electors at voter service and polling centers (i.e., twenty-two (22) days before election day). C.R.S. § 1-12-100.5(3.5).

The official ballot must contain the statement submitted by the recall committee stating the grounds for demanding the officer's recall. C.R.S. § 1-12-112(1).

The officer sought (Lance FitzGerald) to be recalled may submit a statement of three hundred (300) words or fewer justifying the officer's course of conduct. C.R.S. § 1-12-112(1).

The officer (Lance FitzGerald) shall not include any profane or false statements in the statement of justification. The officer shall submit the statement no later than ten (10) business days after the petition has been deemed sufficient and the time for protest has passed. The official ballot shall contain the statement of justification if submitted according to requirements. C.R.S. § 1-12-112(1).

If a majority of those voting on the question of the recall of any incumbent from office vote “no”, the



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incumbent (Lance FitzGerald) shall continue in office; if a majority vote “yes”, the incumbent will be removed from office upon the qualification of the successor. C.R.S. § 1-12-116.

SUCCESSOR CANDIDATES/ELECTION

The election of a successor is held at the same time as the recall election. C.R.S. § 1-12-118.

The names of those persons nominated as candidates to succeed the person sought to be recalled shall appear on the ballot, together with a blank space for a write-in candidate who timely files an affidavit, as required by law. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for office. C.R.S. § 1-12-118; C.R.S. § 1-12-112(2)-(3).

Nominated successor candidates must meet the qualifications of a party candidate or an unaffiliated candidate as provided in Part 8 of Article 4 of Title 1 of the Colorado Revised Statutes and must be nominated by a political party petition or an unaffiliated petition as provided in Part 9 of Article 4 of Title 1. C.R.S. § 1-12-117(1).

Nomination petitions may be circulated beginning the first (1st) date on which a protest may be filed and shall be filed no later than fifteen (15) calendar days prior to the “date for holding the election.” C.R.S. § 1-12-117(1).

The “date for holding the election” is **NOT** election day. It is the first (1st) day on which recall ballots are made available to eligible electors at voter service and polling centers (i.e., twenty-two (22) days before election day). C.R.S. § 1-12-100.5(3.5).

Every nomination petition must be signed by the number of eligible electors required for the office in part 8 of article 4 of Title 1 or as otherwise provided by law. C.R.S. § 1-12-117(3)(a).

The Clerk must verify successor candidate petitions within forty-eight (48) hours after the deadline to file such petitions. C.R.S. § 1-12-117(3)(b)(I).

Votes for write-in candidates are allowed only if an affidavit of intent has been filed indicating that the person for whom the write-in vote is made desires the office and is legally qualified to assume the duties of the office if elected. C.R.S. § 1-12-115.

The affidavit of intent shall be filed with the designated election official no later than fifteen (15) calendar days before the recall election date. C.R.S. § 1-12-115.

Within seventy-two (72) hours after certification of results of a recall election, any elector who is registered in a Ouray County may file a protest in district court alleging that the successor candidate who received the highest number of votes fails to qualify for the office. C.R.S. § 1-12-118.5(1)(a).

If the court determines that the successor candidate fails to qualify, that individual may not take office. In such case, the office is deemed vacant and shall be filled according to law. The officer recalled in the recall election at which the unqualified successor was elected is ineligible to fill the vacancy. C.R.S. § 1-12-118.5(2).

COSTS OF RECALL ELECTION

If at any recall election for county office the incumbent whose recall is sought is not recalled, the governing body shall authorize a resolution for repayment from the general fund of the county any money



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authorized to be repaid to the incumbent by this article which the incumbent actually expended as an expense of the election. In no event shall the sum repaid exceed forty cents per eligible elector as defined in 1-1-104(16) subject to a maximum repayment of ten thousand dollars. C.R.S. § 1-12-120 (2)

The incumbent shall file a complete and detailed request for reimbursement within sixty days after the date of the recall election, who shall then review the reimbursement request for appropriateness and refer the request to the governing body. C.R.S. § 1-12-120 (5)

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