

THE PROCESS FOR RECALLING AN ELECTED OFFICIAL IN THE CITY OF FORT COLLINS, CO

A Guide Through the Recall Process
July 2015



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INTRODUCTION

The City of Fort Collins, Colorado is a home rule municipality. As such, the citizens of Fort Collins have adopted local provisions in the Charter of the City of Fort Collins (hereafter the "Charter") relating to the recall of elected officials.

Article IX, Section 1 of the Charter states: "Any elective officer of the city may be recalled from office, through the procedure and in the manner provided herein, by the registered electors entitled to vote for a successor of such incumbent officer."

This guide is provided to assist electors in exercising the power to recall an elected official. The information contained herein is basic in nature and is not intended to be comprehensive in scope or depth, nor is it to be construed as legal advice. If you have questions regarding the interpretation of applicable laws and regulations for your particular situation, you may wish to consult with a private attorney who can provide you with that interpretation. If there is any inconsistency between these guidelines and the applicable provisions of the City Code, City Charter, or state law, the provisions of the Code, Charter, or state law take precedence.

How to Use this Guide

The information provided herein is presented, to the extent possible, in the order of occurrence of actions and events. The Guide contains terminology not commonly used by the general public, and as such, may be interpreted differently by different individuals. However, such terminology has very specific meaning within the context of the recall process and elections. A list of terms and their definitions, as applied herein, has been included at the end of this document.

Contact Information

All questions or comments regarding this Guide should be directed to the City Clerk's Office. Although the entire staff of the City Clerk's Office has varying levels of familiarity with the recall process, please direct your questions and/or comments to:

Wanda Winkelmann, City Clerk
wwinkelmann@fcgov.com
(970) 221-6515

Rita Knoll, Chief Deputy City Clerk
rknoll@fcgov.com
(970) 221-6516

The City Clerk's Office is located at 300 LaPorte Avenue. Mail should be addressed to PO Box 580, Fort Collins, CO 80522.

THE RECALL PROCESS

When Are Elected Officials Eligible to be Recalled?

No recall petition can be circulated for filed against any elected official until he or she has actually held office for a least one year, nor within six months of the end of his or her term.

A table showing the current elected officials, the period within which recall can occur, and the number of valid signatures required on a recall petition is provided at the end of this guide.

How Are Recall Proceedings Started?

One or more registered electors may commence recall proceedings by filing with the City Clerk an affidavit stating the reasons for seeking the recall of an elected official. The affidavit must be 200 words or less, and a separate affidavit is required for each official for which recall is sought.

What Happens Next?

Within 48 hours after the filing of the affidavit, the City Clerk is required to mail (by certified mail) a copy of the affidavit to the affected officer. Within five days after the date of mailing, the affected officer may file with the City Clerk a sworn statement in defense of the charges. The sworn statement must be 300 words or less.

The affidavit and response are intended for the information of the registered electors, who are the sole and exclusive judges of the sufficiency of the grounds assigned for the recall. The grounds are not open to judicial review.

Petition Forms

Within 10 days after the date that any statement in defense must be filed, a petition for the recall of the officer must be submitted to the City Clerk for approval of the form of the petition. A separate petition is required for each officer sought to be recalled.

The City Charter requires a recall petition to contain or have attached to each section, throughout its circulation, a copy of the charges set forth in the affidavit on file with the City Clerk, and if requested by the person sought to be recalled, a copy of the statement in defense. The petition must designate by name and address at least three, but no more than five, persons who will act as petition representatives. The petition must also contain an affidavit to be completed by the petition circulator.

The form of the recall petition is prescribed by ordinance of the Council. The petition form contains warning language printed in red ink. Therefore, it is necessary to assemble petition sections using original forms provided by the City Clerk. Alternate methods of assembling petition sections, such as assembling one original and having color copies made or obtaining the electronic file (in Pagemaker format) for printing color originals, may be available. It is recommended that you consult with the City Clerk's Office as early as possible on options for assembling petition sections.

A petition may be circulated and signed in sections, provided that each section contains all required information and is securely fastened at the top. (A typical method of fastening each section is by stapling across the top.) All sections must be filed as one instrument.

Upon the filing of an affidavit for recall, the City Clerk will provide blank petition forms to be used in assembling petition sections. The City Clerk will need to know how many petition sections you plan to assemble, and how many signature lines you want to include in each section (each section can contain up to 100 signature lines, in increments of 10).

Approval of Form for Circulation

Before circulation of the petition can begin, the City Clerk must approve the form of the petition. The City Clerk will examine each petition section to determine that it contains all required information (and *only* that information), that each section is numbered and the pages within each section are numbered, and that each section is securely fastened at the top. Any irregularities in the petition sections, if found, will be identified and the petition representatives will be given an opportunity to correct the irregularities. The City Clerk will prepare a certificate of approval, which will contain a list of the section numbers that have been approved for circulation. The date of the certificate of approval shall start the running of the time periods provided for circulation and filing of the petition.

If the petition representatives determine during the circulation period that more petition sections are needed, additional sections may be submitted to the City Clerk for approval. However, additional sections are subject to the original time periods started with the approval of the first petition sections.

A sample petition section is provided at the end of this guide.

Circulators

Only persons who are eighteen years of age or older may circulate a petition for signatures. Each petition section must be carried by only one circulator, but a circulator may carry more than one petition section.

Nothing prohibits circulators from being paid to circulate a petition. Circulators do not have to be registered electors.

Circulators are prohibited from paying or offering to pay any money or other thing of value to any person for the purpose of inducing or causing the person to sign a petition.

Circulators are required to complete an affidavit, attached to each petition section, after the petition has been circulated. The affidavit must be signed, under oath, before a notary public. No additional signatures should be obtained on a petition section after completion of the affidavit.

Signature Requirements

Only registered electors (persons registered to vote in city elections who reside within the city limits) may sign a petition. In the case of an attempted recall of the Mayor, "registered electors" is construed to mean persons residing within the city limits who are registered to vote as of the date they sign the petition for recall. In the case of a proposed recall of District Council representatives, "registered electors" is construed to mean persons who are registered to vote within the particular affected Council District as of the date they sign the petition for recall of the District Council representative.

Each signer must sign his or her own signature, followed by the printed name, residence address, and date of signing. No person shall sign more than once (on the same section or on different sections).

The number of signatures required on a recall petition is based on 25% of the entire vote cast at the last election for all candidates for the affected office. For example, if three candidates ran for a District seat and the combined total of votes cast for those three candidates was 5,784, the number of signatures required on a recall petition for the District representative would be 1,446.

A table showing the current elected officials, the period within which recall can occur, and the number of valid signatures required on a recall petition is provided at the end of this guide.

NOTE: If a subsequent recall attempt is made against a particular candidate, the signature requirements are double.

Based on statistics from prior petition efforts, 30-50% of the signatures on a petition are rejected for various reasons. Therefore, it is recommended that the total number of signatures collected far exceed the required amounts.

Submittal Requirements and Deadlines

As previously mentioned, all sections of a petition must be filed as one instrument. A petition must be filed within 30 days after the City Clerk's approval of the form for circulation.

At the time the petition is filed, the City Clerk will prepare a receipt for the petition, which will include a listing of all petition sections filed (by section number). It is very common that the petition (as filed) will not contain all of the sections approved for circulation, usually because some petition circulators fail to return sections to the petition representatives in time to meet the filing deadline.

VERIFICATION AND CERTIFICATION OF THE PETITION

Examination of the Petition

When a recall petition is filed with the City Clerk, the Clerk has five working days to examine the petitions to determine if the petition is signed by the requisite number of registered electors and that the petition contains the required particulars and affidavits.

The City Clerk's Office uses a very detailed process for the examination of petitions. An Access database is used to check signatures against the voter registration records maintained by the Larimer County Elections Office. The database allows staff to search by name or address, or a portion of either one. This feature is useful when the handwriting of the signer is difficult to read. If the signer is found in the database, the information on the signature line is compared to the information in the database. Each signature line is assigned a code reflecting the results of the examination. Any discrepancy in information, such as a different address, or other information supporting the assigned code, is noted on the petition. If it can be determined that a signature on a petition is similar to a name in the voter registration database, with an address matching the address in the voter registration database, and no other similar names are found at the same address or any other address, an assumption will be made that a match has been found and the signature will be counted as valid.

Throughout the examination of the petition, the findings for each petition section are entered into a spreadsheet, and the total number of valid and rejected signatures are monitored. As soon as the requisite number of valid signatures is reached, the examination is stopped.

As earlier stated, the City Clerk has five working days to complete the examination. Although it is not unusual for the examination to take less time, the full five days will be used if necessary to complete a thorough examination. If the petition appears to be insufficient, a sampling of rejected signatures will be reexamined in an effort to reverse the rejection.

Reasons for Rejecting Signatures

There are many reasons why signatures, and sometimes even entire petition sections, are rejected. Following is a list of the most common reasons for rejecting individual signatures:

- The individual is not registered to vote at the address given on the petition.
- The individual listed an address within the city limits, but is registered at an address outside of the city limits.
- The individual does not appear in the voter registration records.
- The individual failed to provide a residence address.
- The individual listed an address outside of the Fort Collins city limits.
- The individual signed more than once.
- The signature is illegible and cannot be verified.
- The individual's date of registration is later than the date he or she signed the petition.
- There are multiple individuals with the same name registered, but none are registered at the address listed.

Whole petition sections, and the signatures contained therein, may be rejected because:

- The petition section was circulated by an individual who is not 18 years of age or older.
- The petition section does not contain a signed and properly notarized affidavit. (Common notary problems include absence of notary's commission expiration date and/or seal.)

- The petition section appears to have been disassembled/reassembled after the Clerk's approval of the form of the petition. (This indicates the possibility that a portion of the information required to be attached to the petition section during its circulation was removed.)

The reasons listed above are common examples, based on actual experiences, and should not be construed as limiting the possible reasons for rejection.

A detailed accounting of the number of valid signatures on each petition section, as well as the number of rejected signatures, and the reasons therefor, will be prepared and will be provided upon request.

Insufficient Petition

If a recall petition is deemed insufficient after the examination or following protest proceedings (described below), the City Clerk will prepare a certificate of insufficiency, specifying the particulars of insufficiency, and will notify all of the petition representatives of such insufficiency, both verbally and by providing copies of the certificate of insufficiency. An insufficient petition may be withdrawn and amended within 15 days of the date of the Clerk's certificate of insufficiency. Within 5 days of the filing of an amended petition, the Clerk must examine the amended petition and certify the results. If the amended petition is still insufficient, or if no amendment was made before the expiration of the time permitted for amendment, the City Clerk will return the petition to one of the designated petition representatives. The return of the petition is without prejudice to the filing of a new petition for the same purpose.

The only acceptable amendment of a petition is the submission of additional signatures on petition sections not previously submitted for examination. Nothing prohibits the collection of additional signatures during the period that the City Clerk is examining the petition. Amendments to previously submitted petition sections will not be accepted, since such amendment would take place after execution and notarization of the circulator's affidavit.

Sufficient Petition/Certification of Petition

When a petition or amended petition is deemed sufficient, whether following the sufficiency determination by the City Clerk in the absence of a protest, or following protest proceedings, the City Clerk is required to certify and

present the certified petition to the City Council at the next regularly scheduled meeting. The Clerk's certification is the final determination as to the sufficiency of the petition, subject only to the protest procedure described below.

Protests

Any registered elector may protest the sufficiency of a petition by filing a written protest, under oath, in the City Clerk's office within 10 days of the original filing of the petition. The protest must set forth with particularity the grounds of protest and the names and defects in form protested. The reasons stated for recall may not be protested.

If a protest is filed, the City Clerk must set a hearing date within 7 days of filing of the protest. At least 5 days prior to the hearing, the Clerk is required to mail a copy of the protest to all of the designated petition representatives, together with a notice of the time for hearing.

The City Clerk is the hearing officer for all protest hearings. The Clerk has the power to issue subpoenas to compel the attendance of witness and the production of documents. All records and hearings are public, and all testimony must be given under oath. The hearing must be summary in nature, and concluded within 30 days after the petition was filed. Within 10 days after the hearing is concluded, the Clerk must decide and certify the results of the hearing.

If the results of the protest hearing result in the petition being deemed insufficient, the petition representatives have an opportunity to amend the petition as described above under "Insufficient Petition".

COUNCIL ACTION

A recall election shall be for the dual purposes of voting on the recall of the officer sought to be removed and the election of a successor.

Upon the City Clerk's presentation of a petition certified to contain a sufficient number of signatures for a recall election, the City Council shall set a date for the election which must be held on a Tuesday not less than 60 nor more than 90 days from the date of presentation of the certified petition to Council. If any other city election is to occur within 90 days, the recall election must be consolidated with such other election.

The order setting a date for the recall election shall not become effective until five days from the presentation of the certified petition to Council. If the affected officer resigns within the five-day period, the vacancy may be filled by appointment. If a vacancy occurs after the effective date of the order, the election to fill the vacancy shall nevertheless proceed.

THE ELECTION

Nominations on Recall

Anyone desiring to become a candidate at the recall election must do so by nominating petition. The deadline for filing a nominating petition for a recall election is no later than 40 days prior to the date of the recall election. If more than one officer is sought to be recalled, then the nominating petition must specify which incumbent the candidate seeks to succeed. All Charter provisions related to the nomination and qualification of candidates shall apply to recall elections.

The name of the person against whom a recall petition is filed shall not appear on the ballot as a candidate for the office.

The Ballot

For every officer whose recall is to be voted on, the ballot will contain the statement of grounds, and, if requested by the affected officer, the officer's statement in defense followed by the words:

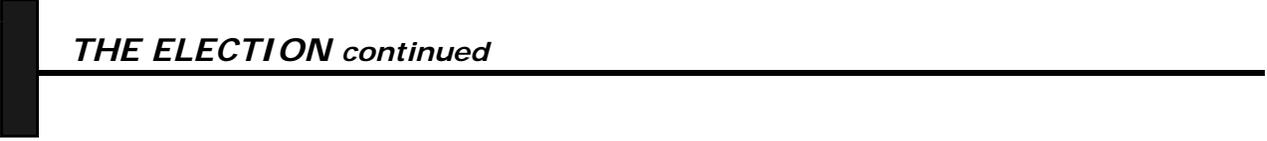
"Shall (name of person against whom the recall petition is filed)
be recalled from the office of _____?"

_____ Yes
_____ No

Under each question, the names of those persons who have been nominated as candidates to succeed the person sought to be recalled will be printed.

After the Election

If a majority of those voting on the question of the recall votes "No", the incumbent continues in office. If a majority votes "Yes" for the incumbent's removal, the incumbent is deemed removed from his or her office when his or her successor takes the oath of office. The person receiving the highest number of votes is elected for the remainder of the incumbent's term, and will take office at the next regular or special meeting of the Council (as the first item of business).



THE ELECTION continued

If the elected candidate fails to qualify within 60 days after the issuance of a certificate of election, the candidate with the next highest vote is elected. If there is no other elected successor who qualifies, the office is deemed vacant and will be filled by appointment by the remaining members of the Council as provided in Article II, Section 18 of the Charter.

CAMPAIGN REGULATIONS

Any campaign efforts with regard to a recall election are subject to the campaign regulations set forth in Chapter 7 of the City Code. In the event that recall proceedings are commenced, separate guidelines will be provided.

DEFINITIONS

Ordinance – A municipal law or regulation adopted as an ordinance of the City under the provisions of the City Charter.

Resolution – A formal expression of a decision, opinion, policy or directive of the City, expressed in a formally drafted document and voted upon by the City Council, that does not have the force of law.

Registered elector – A person residing in the city who has registered to vote in city elections in the manner required by law. In the case of recall, “registered elector” may be further defined by the Council District in which the person resides.

Petition – a formal document, addressed to the City Council, requesting the recall of an elected official, which is signed by a requisite number of registered electors of the city of Fort Collins.

Petition representative – A registered elector who shall represent the signers of a petition in all matters affecting the petition.

Circulator – A person who is 18 years of age or older, who carries one or more sections of a petition for the purpose of obtaining signatures in support of the subject of the petition from registered electors of the city of Fort Collins.

Ballot issue, ballot question or issue – Any measure put to a vote of the registered electors of the city by the City Council at any election held under the provisions of the Charter. *Ballot issue, ballot question or issue* shall also mean any measure for which recall, initiative or referendum proceedings have been commenced pursuant to Article IX, Section 1(b), Article X, Section 1(b), and Article X, Section 2(b), respectively, of the Charter.

Candidate – Any person who seeks nomination or election to the office of Mayor or Councilmember at any city election. A person is a candidate if the person has publicly announced an intention to seek election or has filed nominating petitions for the office of Mayor or Councilmember. *Candidate* shall also mean any elected official who is the subject of recall proceedings pursuant to Article IX of the Charter.

Candidate committee – A person, including the candidate, or persons with the common purpose of receiving contributions and making expenditures under the authority of a candidate. A candidate shall have one candidate committee.



DEFINITIONS continued

Issue committee – Two or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions and making expenditures to support or oppose any ballot issue or ballot question; or any partnership, committee, association, corporation, labor organization or other organization or group of persons that has accepted contributions or made expenditures to support or oppose any ballot issue or ballot question.

CITY CHARTER AND CODE PROVISIONS

Relevant provisions relating to elections and recall can be found in Article IX of the City Charter and Chapter 7 of the Code of the City of Fort Collins.

SAMPLE PETITION

ARTICLE IX
CITY CHARTER

SUPPLEMENTAL INFORMATION

SIGNATURE REQUIREMENTS

Councilmember	Date Elected	Number of votes cast for all candidates	Required number of valid signatures (25%)	Period Within Which Recall Could Occur *
Wade Troxell Mayor	04/07/15	32,486	8,122	04/14/2016 - 10/02/2018
Bob Overbeck District 1	04/02/13	4,729	1,183	04/09/2014 - 10/04/2016
Ray Martinez District 2	04/07/15	7,091	1,773	04/14/2016 - 10/02/2018
Gino Campana District 3	04/02/13	5,515	1,379	04/09/2014 - 10/04/2016
Kristin Stephens District 4	04/07/15	6,114	1,529	04/14/2016 - 10/02/2018
Ross Cunniff District 5	04/02/13	2,917	730	04/09/2014 - 10/04/2016
Gerry Horak** District 6	04/07/15	3,931	983	04/21/2016 - 10/02/2018

* One year calculated from date Oath of Office taken. 6 months prior to end of term calculated from future election date, because date term ends is based on when new members take oath, which is not yet determined.

** Councilmember Horak's election was not final until a recount conducted on April 17, 2015 was certified. Councilmember Horak took his oath of office on April 21, 2015.