

[NOTE: ALL "SHALL" AND "HE OR SHE" REFERENCES WILL BE UPDATED AFTER THIS DRAFT]

[CONSIDER REORGANIZING THIS ARTICLE]

ARTICLE IX. RECALL

Section 1. The recall.

- (a) Power. 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. The procedure to effect a recall shall be as provided in this Article.
- (1) For purposes of this Article, in the case of recall of the Mayor, the words "registered elector" shall be construed to mean persons residing within the city who are registered to vote as of the date they signed the petition for recall.
 - (2) For purposes of this Article, in the case of a proposed recall of District Council representatives, the words "registered elector" shall be construed to mean persons who are registered to vote within the particular affected Council District of the city as of the date they signed the petition for recall of the District Council representative.
 - (3) No recall petition shall be circulated or filed against any officer until the officer has actually held office for at least one (1) year in the officer's current term, nor within six (6) months of the end of such term.
[MOVED TO ABOVE]
- (b) Commencement of proceedings; affidavit. One (1) or more registered electors may commence recall proceedings by filing with the City Clerk an affidavit of not more than two hundred (200) words stating the reasons for the recall of the officer sought to be removed. A separate affidavit shall be filed for each officer sought to be recalled.
- (1) Within two (2) working days after the filing of the affidavit, the City Clerk shall mail a copy by certified mail to the affected officer. The City Clerk will also promptly provide the affidavit to the City Council by electronic mail.
 - (2) No later than seven (7) calendar days after the date of the City Clerk's mailing, the affected officer may file with the City Clerk a sworn statement of not more than three hundred (300) words in defense of the charges.
 - (3) The affidavit and the response are intended for the information of the registered electors, who shall be the sole and exclusive judges of the sufficiency of the ground or grounds assigned for the recall, and said ground or grounds shall not be open to judicial review.
 - (4) No later than seven (7) calendar days after the date by which any statement in defense must be filed, the petitioner must submit to the City Clerk a petition for recall of the officer for City Clerk review in accordance with Section 2(b) of this Article. The petition shall be circulated, signed, verified and filed in the manner provided in Section 2 of this Article.
 - (5) If no petition for recall has been submitted to the City Clerk for approval of its form within the time period specified above, the recall proceedings shall be terminated.
- (c) **[THIS SUBSECTION MOVED TO NEW SECTION 3]**

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[MOVED TO SECTION 4]

Section 2. Petitions.

- (a) Separate petitions required. A separate petition shall be circulated and filed for each officer sought to be recalled.
- (b) Form and content.
 - (1) Adoption of form. The Council shall prescribe by ordinance, upon recommendation of the City Clerk, a general form of petition which shall contain warnings and notices to signers as necessary and meet the requirements of this Article.
 - (2) Approval of form. No petition shall be circulated until the City Clerk has approved the form for circulation. The City Clerk must determine whether to approve the form of petition no later than five (5) working days after submittal. The City Clerk shall first determine that the petition form contains only the matters required by this Article. The City Clerk's approval under this Section shall not constitute an approval of the content of the petition, but rather, shall start the running of the time periods provided for circulation and filing of petitions for recall.
 - (2) Statement of purpose. The petition shall be addressed to Council and shall 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.
 - (3) Petition representatives. Each petition shall designate by name and address three (3) registered electors who shall represent the signers of the petition in all matters affecting the petition, and shall be endorsed by such persons. [MOVED FROM BELOW]
 - (4) Signatures. Only registered electors may sign the petitions authorized under this Article. Each signer must sign their own signature and each signature shall be followed by the printed name of the signer, the street and number address of their residence, and the date of signing. No person shall knowingly sign their name more than once for the recall of the same incumbent.
- (c) Circulation of petition.
 - (1) The petition shall be circulated and signed in sections with each section consisting of one (1) or more sheets securely fastened at the top, and each section must contain a full and accurate copy of the text of the petition and the names and addresses of the designated representatives for the petition.
 - (2) All sections shall be filed with the City Clerk as one (1) instrument.
 - (3) Only persons eighteen (18) years of age or older may circulate the petition for signatures.
 - (4) The circulation of any petition by any medium other than personally by a circulator is prohibited.
 - (5) No person shall receive any compensation whatever for signing a recall petition.
- (d) Affidavit of circulator. A circulator shall attach to each section of the petition circulated, an affidavit signed by the circulator under oath before a notary public stating the following:
 - (1) the circulator's address of residence;
 - (2) that the circulator is eighteen (18) years of age or older;
 - (3) that he or she personally circulated the section;
 - (4) that each signature was affixed in the circulator's presence;
 - (5) that to the best of the circulator's knowledge and belief each signer was at the time of signing a registered elector of the city;

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- (6) that to the best of the circulator's knowledge and belief each signature is the genuine signature of the person whose name it purports to be;
- (7) that each signer had an opportunity before signing to read the full text of the petition; and
- (8) that the circulator has not paid or offered to pay any money or other thing of value to any signer for the purpose of inducing or causing the signer to affix his or her signature to the petition.

A petition verified by the valid affidavits of its circulators in each of its sections shall be prima facie evidence that the signatures thereon are genuine and true.

- (e) Number of signatures required. **[THESE DELETIONS REMOVE HOLDOVER LANGUAGE FROM PRIOR COUNCIL STRUCTURE]**
 - (1) First recall attempt. The petition must be signed by registered electors equal in number to at least twenty-five (25) percent of the entire vote cast at the last preceding regular city election for all candidates for the office, to which the incumbent sought to be recalled was elected as one of the officers thereof.
 - (2) Subsequent recall attempts. After one (1) recall petition and election, a recall petition filed against the same officer during the same term for which elected must be signed by registered electors equal in number to at least fifty (50) percent of the entire vote cast at the last preceding regular city election for all candidates for the office to which the incumbent sought to be recalled was elected as one of the officers thereof.
- (f) Place of filing, time limits. For the recall process to proceed, petitions for recall must be filed with the City Clerk as follows:
 - (1) For a District Council representative, no later than twenty-eight (28) calendar days after the City Clerk's approval of the form for circulation;
 - (2) For a Mayor, no later than forty-two (42) days after the City Clerk's approval of the form for circulation.
- (g) Sufficiency of petition; ~~amendment~~. Within fifteen (15) working days of the filing of a petition the City Clerk shall ascertain by examination of the petition and the registration books whether the petition is signed by the requisite number of registered electors and contains the required particulars and affidavits. If the petition is insufficient, the City Clerk shall so certify and forthwith notify all of the designated petition representatives in writing, specifying the particulars of insufficiency.
 - ~~(2) Insufficient petition; amendment. If a recall petition is deemed insufficient, whether following the initial determination by the City Clerk, or following protest proceedings, it may be amended by the submission of additional signatures collected after the City Clerk approved the form of the petition and within fourteen (14) calendar days from the filing of the Clerk's issuance of certificate of insufficiency.~~
 - ~~(i) Such signatures must be collected consistent with the requirements for collecting petition signatures as described in this Article.~~
 - ~~(ii) Within fifteen (15) days after such amendment, the City Clerk shall make examination of the amended petition and certify the result.~~
 - ~~(iii) If the amended petition is still insufficient, or if no amendment was made before the expiration of the time permitted for amendment, the petition shall be null and void without prejudice to the filing of a new petition for the same purpose.~~
- (h) Protests. **[CONFORMED TO PROTEST PROCESS IN ARTICLE X]**
 - ~~(1) Registered electors desiring to protest the sufficiency of a petition may file a written protest, under oath, in the office of the City Clerk within five (5) working days of the City Clerk's preliminary determination as to sufficiency of the petition. The protest shall set forth with particularity the~~

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~~grounds of protest and any signatures and related defects in form protested. The reasons assigned for recall may not be protested.~~

- ~~(2) Upon the filing of a written protest, the City Clerk shall set a time for hearing such protest, which shall be no more than fourteen (14) days thereafter.~~
 - ~~(3) At least five (5) working days before the hearing, the City Clerk shall send a notice of the date, time and location for the hearing and a copy of the protest to all of the designated petition representatives, the person(s) who filed the protest, and the City Council.~~
 - ~~(4) All protest hearings shall be before a hearing officer appointed by the City Manager. The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents.~~
 - ~~(5) All records and hearings shall be public, and all testimony shall be under oath.~~
 - ~~(6) The hearing shall be summary in nature and concluded no later than twenty eight (28) working days after the protest was filed.~~
 - ~~(7) The hearing officer shall decide and certify the results of the hearing no later than ten (10) days after the hearing is concluded.~~
 - ~~(8) The City Clerk shall make any final determination regarding sufficiency or insufficiency of a petition and shall base such determination on protest hearing results issued by the hearing officer.~~
 - (1) Registered electors desiring to protest a determination by the City Clerk that a petition is either sufficient or insufficient may file a written protest, under oath, in the office of the City Clerk within seven (7) calendar days of the City Clerk's preliminary determination as to sufficiency of the petition. The protest must set forth with particularity the grounds of protest and any signatures and related defects in form protested.
 - (2) Upon the filing of a protest, the City Clerk will send a copy of the protest to the designated petition representatives, the City Council and the City Manager. The City Manager will appoint a hearing officer, who, in conjunction with the City Clerk, will set a time for hearing such protest, which must be no more than ten (10) working days after the filing of a protest.
 - (3) At least five (5) working days prior to the hearing, the City Clerk will send a notice of the date, time and location for the hearing and a copy of the protest to all of the designated petition representatives, the person(s) who filed the protest, and the City Council.
 - (4) All protest hearings will be before a hearing officer appointed by the City Manager. The hearing officer will have the power to issue subpoenas to compel the attendance of witnesses and the production of documents.
 - (5) All records and hearings will be public, and all testimony must be under oath.
 - (6) The hearing will be summary in nature and concluded no later than twenty (20) working days after the protest was filed.
 - (7) The hearing officer must decide and certify the results of the hearing no later than five (5) working days after the hearing is concluded, and no further protest regarding the petition may be filed.
 - (8) The City Clerk will make any final determination regarding the sufficiency or insufficiency of a petition and must base such determination on the protest hearing results issued by the hearing officer.
 - (9) A petition for recall that has been deemed insufficient after protest may not be amended or circulated further and no further protest regarding the petition may be filed.
- (i) Certification and presentation to Council. When and if a petition or amended petition is deemed sufficient, whether following the initial sufficiency determination by the City Clerk in the absence of a protest, or following protest proceedings, the City Clerk shall so certify and present the certified petition to the Council
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at the next regularly scheduled meeting or special meeting called for this purpose. The City Clerk's certificate shall be the final determination as to the sufficiency of the petition.

Section 3. Call of election. [MOVED FROM Section 1(c)]

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 sufficient for recall, the Council shall set a date for the election which shall be held on a Tuesday not less than sixty (60) nor more than ninety (90) days from the date of presentation of the certified petition to Council. However, if any other city election is to occur within ninety (90) days from the presentation of the certified petition to Council, the recall election shall be postponed and consolidated with such other city election. The order setting a date for the recall election shall not become effective until five (5) days from the presentation of the certified petition to Council. If the officer resigns within the five-day period, the vacancy may be filled by appointment. If a vacancy occurs in the affected office after the effective date of the order, the election to fill the vacancy shall nevertheless proceed.

- (a) 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.
- (b) Upon the City Clerk's presentation of a petition certified as sufficient for recall, the Council shall set a date for the election which shall be held on a Tuesday at the earliest possible election date that allows the City Clerk sufficient time to meet all legal, logistical and technical requirements applicable to the conduct of an election. The City Clerk will advise the Council of said election date in connection with Council's call of the recall election.
- (c) If the earliest possible election date determined by the City Clerk is less than seventy-five (75) prior to an upcoming November regular municipal election or November General Election conducted by the Larimer County Clerk and Recorder, the recall election shall be postponed and consolidated with such other election date.
- (d) If a recall election must be consolidated with a November regular municipal election pursuant to subsection (c), and if the Council office held by the officer for whom a recall is sought will be on such November ballot, the recall process shall be deemed terminated and the regular election for that Council office will proceed as part of the November regular municipal election.
- (e) If the officer resigns before ballots for the recall election are mailed to the voters, the recall process shall be deemed terminated and the vacancy must be filled by appointment. If a vacancy occurs after the ballots for the recall election have been mailed to the voters, the election to fill the vacancy under Section 4, below, shall nevertheless proceed.

Section 4. Recall elections.

- (a) Generally. Recall elections shall be conducted in the same manner as provided generally for regular or special city elections in this Charter. All Charter provisions related to nomination and qualification of candidates shall apply to recall elections.
- (b) Nominations on recall. Anyone desiring to become a candidate at the recall election shall do so by nominating petition as required in Article VIII of this Charter. The deadline for filing a nominating petition for a recall election shall be as established by ordinance of the Council. If more than one (1) officer is sought to be recalled, then the nominating petition must specify which incumbent the candidate seeks to succeed. The name of the person against whom the recall petition is filed shall not appear on the ballot as a candidate for the office.
- (c) Ballots. There shall be printed on the official ballot, as to every officer whose recall is to be voted on, 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 (_____)?" Following such question shall appear the words, "Yes" indicating a vote in favor of the recall

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and "No" indicating a vote against such recall. On such ballots, under each question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person sought to be recalled. (d) Election results. If a majority of those voting on the question of the recall of any incumbent from office votes "No," the incumbent continues in office. If a majority votes "Yes" for the incumbent's removal, the incumbent shall thereupon be deemed removed from his or her office upon the taking of the oath of office by his or her successor. If the officer is recalled, the candidate for succession receiving the highest number of votes at the election determined in accordance with Article VIII, Section 7, shall be declared elected for the remainder of the incumbent's term.

- (e) Elected replacement. The candidate elected shall take office upon taking the oath of office, which shall occur as the first order of business at the next regular or special Council meeting after certification of the election results. In case the candidate elected fails to qualify by no later than thirty (30) working days after the issuance of a certificate of election, the candidate with the next highest vote shall be elected, and if there is no other elected successor who qualifies, the office shall be deemed vacant, and shall be filled by appointment by the remaining members of the Council, as provided in Article II, Section 18.
- (f) Disqualification from office. No person who has been recalled or has resigned after the City Clerk's presentation to Council of a certified, sufficient petition for recall of such person shall serve the city in any elected or Council-appointed capacity within two (2) years after such removal or resignation. [MOVED FROM SECTION 2(d)]

Section 5. Further regulations.

The Council may, by ordinance, make such further rules and regulations as are consistent with this Charter and the Colorado Constitution in order to carry out the provisions of this Article. [CODE UPDATES ARE NEEDED RELATED TO RECALL PROCESS WITH OR WITHOUT THESE AMENDMENTS]