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REVISED MEMORANDUM

To: **Dawn Collins, Town Administrator/Clerk**

From: **Scotty P. Krob, Town Attorney**

Date: **July 7, 2025 – REVISED 7.7.25 AT 3:00 P.M.**

Re: **Whether recall elections and initiated ordinance election can be conducted as coordinated elections through El Paso County on November 4, 2025**

NOTE: This memo represents my final opinion on the above-referenced issue. I provided an initial memo earlier today and noted that I would be following up with additional inquiry. Having done so, the analysis is largely the same and further supports my previous conclusions.

I have reviewed the statutes governing recall elections and initiated ordinance elections and it is my conclusion that the recall elections and the initiated ordinance election cannot be conducted as part of a coordinated election through the County on November 4, 2025, because under the Town Code and state statute the November 4, 2025 election is not a regular election. Accordingly, the Town should proceed with the recall and initiated ordinance elections on September 9, 2025, as previously discussed with the Board. These conclusions are based on the following analysis.

Municipal elections in statutory towns, such as the Town of Palmer Lake, are governed by Title 31, unless a municipality has specifically elected to be governed by Title 1, which Palmer Lake has not done. See §1-1-102, C.R.S.

Scheduling the recall petition elections is governed by §31-4-503(4), C.R.S., which provides:

> (4) When a recall petition is determined sufficient and any review pursuant to subsection (3)(d) of this section is concluded, the municipal clerk shall submit the petition, together with a certificate of its sufficiency, to the governing body of the municipality at the first meeting of the governing body following expiration of the

period within which a protest may be filed, at the first meeting of the governing body following the determination of a hearing officer that a petition is sufficient, or at the first meeting of the governing body following the conclusion of any review pursuant to subsection (3)(d) of this section, whichever is later. The governing body shall thereupon order and fix a date for the recall election to be held not less than thirty days nor more than ninety days from the date of submission of the petition to the governing body by the municipal clerk and determine whether voting in the recall election is to take place at the polling place or by mail ballot; but, if a regular election is to be held within one hundred eighty days after the date of submission of said petition, the recall election shall be held as a part of the regular election. (emphasis added)

The recall petitions were submitted by the clerk to the BOT on June 30, 2025 and it is my understanding the next date the County Clerk will be conducting an election is November 4, 2025, which is less than 180 days from June 30, 2025. Therefore, the critical issue is whether the County Clerk's November 4, 2025 election is a "regular election". If it is, then coordinating the elections with the County on November 4, 2025 is mandatory. If the County's November 4, 2025 election is not a regular election, then the recall elections cannot be coordinated with the County and the Town must hold a special election within the 30 to 90 day window.

The term "regular election" is defined in Section 2.28.010 of the Palmer Lake Town Code, which provides:

> The regular election of the town shall be held on the Tuesday on which the general statewide election is held in November of each even-numbered year.

The Town's definition of regular election is consistent with the Title 31 definition, contained in §31-1-101, C.R.S. which provides, in relevant part:

> "As used in this title, except where specifically defined, unless the context otherwise requires:
>
> …
>
> (10) "Regular election" means:
> (a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place;
> (b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109(1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

It is my understanding that prior to my representation of the Town of Palmer Lake, the electors voted to move their regular elections to November of even-numbered years, as reflected in the above-referenced section of the Town Code.

Accordingly, my conclusion is that under the town code and the state statutes, the County's odd-numbered year November 4, 2025 election is not a regular election. Therefore, the Town is obligated to schedule a special election within the 30 to 90 day window for the recall elections.

Since coordinating with the County's November election would result in substantial savings of staff time and money for the Town, I followed up with Robert Sheesley, the attorney for the Colorado Municipal League, who agreed with my conclusion. I also checked with the El Paso County attorney, as he is the County Clerk's legal advisor. The County Attorney expressed no concern with my conclusion.

I also looked at the statute regarding setting the election for the initiated ordinance. It is governed by Section 31-11-104(1), C.R.S., which provides:

> (1) Any proposed ordinance may be submitted to the legislative body of any municipality by filing written notice of the proposed ordinance with the clerk and, within one hundred eighty days after approval of the petition pursuant to section 31-11-106(1), by filing a petition signed by at least five percent of the registered electors of the city or town on the date of such notice. The proposed ordinance may be adopted without alteration by the legislative body within twenty days following the final determination of petition sufficiency. If vetoed by the mayor, the proposed ordinance may be passed over the mayor's veto within ten days after the veto. If the proposed ordinance is not adopted by the legislative body, the legislative body shall forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure. (emphasis added)

Since the initiated ordinance was presented and not adopted by the BOT on June 30, 2025, the September 9, 2025 date previously discussed with the BOT is within the required window. Therefore, both the recall elections and the initiated ordinance election should be conducted at a Town special election on September 9, 2025.

If you have any questions or want to discuss further, feel free to give me a call.

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