

ORDINANCE NO. 095, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF
THE CITY OF FORT COLLINS PROPOSED CHARTER
AMENDMENT NO. 2, REPEALING AND REENACTING ARTICLE IX
OF THE CITY CHARTER RELATING TO RECALL

A. The City of Fort Collins Charter is the governing document that defines the City organization and the powers and functions of the City. The Charter was first created by a vote of the people of Fort Collins in 1954 and can only be amended by a vote of the people.

B. Over time, Charter provisions may become obsolete, contradictory, or warrant change to address current needs or trends.

C. Article IV, Section 8 of the Charter provides the Charter may be amended as provided by the laws of the State of Colorado. Colorado Revised Statutes Section 31-2-210 provides that charter amendments may be initiated by the adoption of an ordinance by the city council submitting a proposed amendment to a vote of the registered electors of the city.

D. The Council's Election Code Committee met several times during 2024 to receive information and consider potential City Charter amendment proposals related to the election and petition processes that are governed by the Charter. Article IX of the Charter governs the City's processes for recall of elected officials.

E. A thorough review of Article IX has highlighted confusing and unnecessarily complicated language, and the improvement of these provisions would assist members of the public in exercising their rights regarding recall of elected officials and would reduce confusion and ambiguity for those involved in this process.

F. Incorporated in the revised Article IX are the following:

1. Clarified the usage of the term "shall" by replacing with "will," "must" or other appropriate language.
2. Modernized the language to be more inclusive by removing he/she language.
3. Revised and reorganized to make the description of the process and requirements flow better so they are easier to follow. The process for a recall petition is set out chronologically and is consistent with the other Charter petition processes.
4. Retained the same percentage requirements for signatures (based on first-choice votes with ranked choice voting) and increased timeframes for circulation of a recall petition, including an additional increase in the time to circulate a petition to recall the mayor.

5. Updated the timeframe allowed for the City Clerk to examine petitions because volumes (such as numbers of petition signatures to review) have increased since these current provisions were adopted. The new timeframes are more in line with the examination periods in state statutes.
6. Simplified the Petition Review Process (“Cure” Provisions) to eliminate the time for correction of technical deficiencies after submission of a petition.
7. Updated the Protest process for consistency with the process for filing and deciding protests of other types of petitions, allowing more time for setting of the protest hearing and tightening timeframes for completion of the hearing and decision.
8. Updated time for conduct of an election on a successful petition so they work with new election process timing and requirements. For a successful recall petition, the measure would be set for the next Tuesday for which all election deadlines can be met. If the earliest meetable date is less than 77 days before an upcoming November election, the recall issue must go to that election. However, if the recall election will be on the upcoming November ballot or later, and the office held by the subject of the recall is on that November election, the recall process terminates.
9. Added computation of time provisions to clarify how deadlines are interpreted and setting updated deadlines based on business days (in increments of five) for actions the City must complete and calendar days (in increments of seven) for actions to be completed by others.

G. The Election Code Committee considered and supported similar revisions to Article VIII, regarding elections generally, and Article X, regarding initiative and referendum, which are also under consideration by the Council.

H. The Council finds that these proposed revisions to Article IX of the City Charter, regarding the Recall process, update, simplify and improve that process and are for the benefit of the people of Fort Collins, and the Council desires to present the repealed and reenacted Article IX set forth below to the voters for approval at the November 5, 2024, special municipal election.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the repeal of Article IX of the City Charter and the reenactment of Article IX of the City Charter as set forth below, shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 2” at the special municipal election to be held on Tuesday, November 5, 2024:

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 affect a recall will be as provided in this Article.

- (1) For purposes of this Article, in the case of recall of the Mayor, the words "registered elector" will 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" will 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 may 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.

(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 must be filed for each officer sought to be recalled.

- (1) Within two (2) business days after the filing of the affidavit, the City Clerk will 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) 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 will be the sole and exclusive judges of the sufficiency of the ground or grounds assigned for the recall, and said ground or grounds will not be open to judicial review.
- (4) Within seven (7) 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 must 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 will be terminated.

Section 2. Petitions.

(a) Separate petitions required. A separate petition must be circulated and filed for each officer sought to be recalled.

(b) Form and content.

(1) Adoption of form. The Council must prescribe by ordinance, upon recommendation of the City Clerk, a general form of petition which will contain warnings and notices to signers as necessary and meet the requirements of this Article.

(2) Approval of form. No petition may 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) business days after submittal. The City Clerk must first determine that the petition form contains all matters required under this Article and only the matters required by this Article.

(3) Scope of approval. The City Clerk's approval under this Section does not constitute an approval of the content of the petition or its legality, but rather, starts the running of the time periods provided for circulation and filing of petitions for recall.

(4) Statement of purpose. The petition must 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.

(5) Petition representatives. Each petition must designate by name and address three (3) registered electors who will represent the signers of the petition in all matters affecting the petition.

(6) Signatures. Only registered electors may sign the petitions authorized under this Article. Each signer must sign their own signature and each signature must be followed by the printed name of the signer, the street and number address of their residence, and the date of signing.

(7) Petition sections. Each section of the petition must be individually numbered and must contain no less than thirty (30), and no more than one hundred (100) signature lines.

(c) Circulation of petition.

(1) To be valid, the petition must 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 must 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 may receive any compensation whatever for signing a recall petition.

(6) No person may knowingly sign an initiative petition more than once.

(7) In the event that the signature of any person appears more than once on a petition authorized under this Article, the first signature verified will be counted and all other signatures of that person will be rejected.

(d) Affidavit of circulator. For each petition section, the circulator of the petition section must sign under oath before a notary public the affidavit of circulator attached at the end of the petition section. The affidavit must state the following:

(1) the circulator's address of residence;

(2) that the circulator is eighteen (18) years of age or older;

(3) that they personally circulated the section;

(4) that each signature was affixed in the circulator's presence on the date stated with such signature;

(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;

(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 their signature to the petition.

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

(e) Number of signatures required.

(1) First recall attempt. The petition must be signed by registered electors equal in number to at least twenty-five (25) percent of the total of votes cast at the last preceding regular city election for the office to which the incumbent sought to be recalled was elected.

(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 total of first choice votes cast at the last preceding regular city election for the office to which the incumbent sought to be recalled was elected.

(f) Petition deadlines; submittal.

(1) For the recall process to proceed, petitions for recall must be filed with the City Clerk as follows:

a. For a District Council representative, no later than thirty-five (35) days after the City Clerk's approval of the form for circulation;

b. For a Mayor, no later than forty-nine (49) days after the City Clerk's approval of the form for circulation.

(2) All petition sections must be filed with the City Clerk together at the same time and will collectively constitute the petition.

(3) A recall petition must be filed with the City Clerk within the requisite time or it will be deemed null and void.

(g) Examination of petition.

(1) Within fifteen (15) business days of the filing of a petition the City Clerk will 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.

(2) Any petition section the City Clerk reasonably determines has been disassembled, whether or not it has been reassembled, will be deemed invalid.

(3) Upon submittal of a petition, the Clerk shall not remove the signature of an elector from the petition.

(4) The Clerk will issue publicly and provide to the petition representatives the Clerk's initial determination of petition sufficiency. If the petition is insufficient, the City Clerk will so certify and forthwith notify all of the designated petition representatives in writing, specifying the particulars of insufficiency.

(h) Protests.

(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) days of the City Clerk's initial 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) business days after the filing of a protest.

(3) At least five (5) business 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) business days after the protest was filed.

(7) The hearing officer must decide and certify the results of the hearing no later than five (5) business 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 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 will so certify and present the certified petition to the Council at the next regularly scheduled meeting or special meeting called for this purpose. The City Clerk's certificate constitutes the final determination as to the sufficiency of the petition.

Section 3. Action by Council.

(a) A recall election will 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 must set a date for the election to 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-seven (77) days prior to an upcoming November regular municipal election or November General Election conducted by the Larimer County Clerk and Recorder, the recall election must be consolidated with such other election date.

(d) If a recall election must be consolidated with a November regular municipal election pursuant to subsection (c) or cannot be set until a date after a November regular election, and if the Council office held by the officer for whom a recall is sought will be on such November ballot, the recall process must 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 subject to a recall petition resigns before ballots for the recall election are mailed to the voters, the recall process must 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, must nevertheless proceed.

Section 4. Recall elections.

(a) Generally. Recall elections must 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 apply to recall elections.

(b) Nominations on recall. Anyone desiring to become a candidate at the recall election must do so by nominating petition as required in Article VIII of this Charter. The deadline for filing a nominating petition for a recall election will 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 is barred from appearing on the ballot as a candidate for the office.

(c) Ballots. The official ballot must include, 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 must appear the words, "Yes" indicating a vote in favor of the recall and "No" indicating a vote against such recall. On such ballots, under each question, there must 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 will thereupon be deemed removed from their office upon the taking of the oath of office by their 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, will be declared elected for the remainder of the incumbent's term.

(e) Elected replacement. The candidate elected will take office upon taking the oath of office, which must occur as the first order of business at the next regular or special Council meeting after certification of the election results.

(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 may serve the city in any elected or Council-appointed capacity within two (2) years after such removal or resignation.

Section 5. Computation of time.

(a) Except when business days are specified, all computations of time made under the provisions of this article will be based on calendar days.

(b) Except when computing business days, Saturdays, Sundays, City holidays and days City Hall is closed for business for a full or partial day due to inclement weather or other emergency circumstances will be included, but, if the time for any act to be done or the

last day of any period is a Saturday, Sunday, City holiday or day City Hall is closed for business for a full or partial day due to inclement weather or other emergency circumstances, the period is extended to include the next day that is not a Saturday, Sunday, or City holiday.

(c) In computing time for any act to be done before any regular or special election, the first day will be included, and the last or election day will be excluded.

(d) If the time for an act to be done under this article is referred to in business days, the time will be computed by excluding Saturdays, Sundays, City holidays, and any day City Hall is closed for business for a full or partial day due to inclement weather or other emergency circumstances.

(e) If a provision requires doing an act in "not less than" or "no later than" or "at least" a certain number of days or "prior to" a certain number of days or a certain number of months "before" the date of an election, or any phrase that suggests a similar meaning, if that period would end on a Saturday, Sunday or City holiday, it will instead shift to end on the prior business day that is not a Saturday, Sunday, or City holiday. If the period ends on a day City Hall is closed for business for a full or partial day due to inclement weather or other emergency circumstances, the period will end on the next business day on which City Hall is open for business.

(f) Except when otherwise specified, an act must be completed by 5:00 p.m. Mountain time on the last day for that action.

Section 6. 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.

Section 2. That the following ballot title and submission clause are hereby adopted for submitting Proposed Charter Amendment No. 2 to the voters at said election:

CITY-INITIATED PROPOSED CHARTER AMENDMENT NO. 2

Shall Article IX of the Charter of the City of Fort Collins, regarding the recall process, be repealed and reenacted in the form set forth in Ordinance No. 095, 2024, which makes edits for clarity and consistency and:

- Clarifies the usage of the term "shall" by replacing with "will," "must" or other appropriate language;
- modernizes the language to be more inclusive by removing he/she language;
- revises and reorganizes Article IX to be simpler, easier to follow and clearer;

- retains the same percentage requirements for signatures (based on first-choice votes with ranked choice voting) and increases timeframes for circulation of a recall petition, with an additional increase in the time to circulate a petition to recall the mayor;
- simplifies review process and removes the allowance for time for “cure” of technical errors and omissions;
- tightens timeframe for protest hearing and decision;
- requires Council to set recall measure for vote for the next Tuesday for which all election deadlines can be met and if that earliest meetable date is within 77 days of a November election, it must go on that ballot.
- clarifies that if the office held by the subject of the recall is on the next November election ballot and the election on the recall would be at that election or later, the recall process terminates; and
- adds rules for computation of time and consistent deadline timeframes?

_____ Yes/For
 _____ No/Against

Introduced, considered favorably on first reading on July 2, 2024, and approved on second reading for final passage on July 16, 2024.

 Mayor

ATTEST:

 City Clerk

Effective Date: July 26, 2024
 Approving Attorney: Carrie Daggett