

Chapter 7: County Elections

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County Elections and Initiative/Referendum Powers

Counties are responsible for conducting both general (occurring on even-numbered years) and coordinated (occurring in odd numbered years) elections. Most issues surrounding county elections are the purview of the county clerk and recorder, who, by law, is the chief election official of the county. However, there are a number of duties and powers the BOCC has with regard to elections. In this chapter, we discuss these duties and powers, along with county initiative and referendum powers.

NOTE: Colorado election laws were fundamentally altered in 2013 by the passage of the Voter Access and Modernized Elections Act. Accordingly, this chapter has been significantly updated and revised from previous editions.

COUNTY ELECTIONS

The county clerk and recorder is the chief election official of the county. The county clerk must consult with the secretary of state and follow the rules and regulations promulgated by the secretary of state when rendering decisions and interpretations under the election code. If the county clerk is unable to perform the election duties for any reason, those duties may be performed by a deputy clerk. C.R.S. §1-1-110.

The BOCC supervises the conduct of elections they are authorized or required to call. The BOCC is also expected to consult and coordinate with the clerk and recorder on rendering decisions and interpreting the election code. If more than one political subdivision is holding an election on the same day, the governing boards may hold a coordinated election. C.R.S. §1-1-111.

Precinct Boundaries/Polling Places

The BOCC shall establish and alter precinct boundaries and establish voting places in each precinct. The BOCC shall divide the county into as many precincts as it deems expedient and shall designate voting places within each precinct. In counties using paper ballots, the BOCC shall establish at least one precinct per 600 registered voters; in counties using voting machines, the BOCC shall establish at least one precinct per 1,200 active registered voters. (The BOCC may increase this total to 1500 active registered voters by resolution.) Changes in precinct boundaries or creation of new precincts must be completed 32 days prior to precinct caucus day unless changes are the result of changes in county boundaries. C.R.S. §1-5-101, 30-11-107(f), and 30-11-107(g).

Changes in District Boundaries

When a BOCC determines to change the boundaries of commissioner districts or when new districts are created, such changes or additions can be made only in odd-numbered years and, if made, must be completed by July 1 of such year, except in cases of county boundary changes. C.R.S §30-10-306.

Establishment of Voter Service and Polling Centers

For general elections, the county clerk must designate and staff voter service and polling centers (VSPCs). The required number of VSPCs varies depending on the number of active electors in the county and the proximity to the election. Additionally, counties are required to establish VSPCs on some college campuses and drop box locations for the deposit of completed mail ballots. CRS§ 1-5-102.9

Notices of Election

At least 60 days before any primary election and 57 days before any general or odd-year November election, the secretary of state shall provide a notice to the county clerk. The notice shall list the offices for which nominations are to be made and the persons for whom certificates of designation or political party petitions have been filed for each office. C.R.S. §1-5-203, 1-5-205.

Notice to Clerk of General Election and Candidates

The secretary of state must notify the county clerk within 57 days of a general election of the national, state and district officers to be elected. When general assembly members are to be elected, the number of their districts and the names of the members whose terms will expire shall be specified, as well as the name and party or other designation of each candidate. The name and party of each candidate nominated at the primary election or by petition for a national or state office shall also be specified. Notice shall indicate the order and content of the ballot, including the wording and order of initiated measures on the ballot. C.R.S. §1-5-203, 1-5-205.

Clerk's Notice of Election and Candidates

At least 20 days before each election, the clerk must publish a notice of the election that contains the following:

- ◆ Date of the election;
- ◆ The hours during which polling locations and/or drop-off locations shall be open;
- ◆ The address of the polling location and drop-off location(s);
- ◆ Complete ballot content.

A copy of the notice must be posted at least 10 days prior to the election and until two days after the election in a conspicuous place within the clerk's office. Sample ballots may be used to satisfy the requirement. C.R.S. §1-5-205.

Appointment of Election Judges

For elections coordinated by the county clerk and recorder, the clerk is responsible for appointing election judges for each precinct no later than the last Tuesday in May in even-numbered years from names submitted by the county chairs of the two major political parties. County clerks are required to annually request arrest records from the Colorado Bureau of Investigation for all county employees who staff a vote counting center and have access to voting equipment. The clerk shall list, and file in his or her office the names, addresses and precincts of all election judges. C.R.S. § 1-6-102, 1-6-103.5, 1-6-103.7, 1-6-104, 1-6-108. Under legislation passed in 2000, the clerk may also appoint student election judges. C.R.S. §1-6-101(7).

The governing board calling the election (which in most cases is the BOCC) may set the compensation of election judges at no less than five dollars. Such compensation shall be uniform throughout the county. C.R.S. §1-6-115.

For partisan elections, the clerk shall appoint at least three election judges who meet party affiliation requirements. Regular employees in the clerk's office may serve as receiving judges as long as they meet the party affiliation requirements in C.R.S. § 1-6-109.

State Reimbursement to Counties for Election Costs

Legislation passed in 2000 requires the state to fully compensate counties for the costs of conducting elections in odd-numbered years when the only item on the ballot is a statewide ballot issue. For odd-numbered year elections (where there are items on the ballot besides statewide questions) and general elections the state is required to compensate counties at a rate specified in statute for the duties performed by the county clerk and recorder in conducting the statewide portion of the county election. These rates were increased in 2012, and are now as follows:

- ◆ Ninety cents per active registered voter for counties with 10,000 or fewer active registered electors.
- ◆ Eighty cents per active registered voter for counties with more than 10,000 active registered electors. C.R.S. §1-5-505.5, et seq.

County clerks also recover a portion of election costs from other local governments who participate in a coordinated election administered by the county clerk.

METHODS OF VOTING

Primary Elections

Beginning 2013 and thereafter, all primary elections shall be conducted by mail. Voters may return their completed ballots via U.S. mail, drop them off at designated drop-off centers, or appear in person at a voter service and polling center and cast a vote by paper ballot or by electronic or electromechanical voting systems. C.R.S. §1-5-401. At least 32 days prior to the election date, the clerk shall prepare a separate ballot for each party and shall proceed to have the ballots printed as specified in statute. C.R.S. §1-5-402

The designated election official is authorized to cancel a primary election if there are no opposed races within any political party for any office on the primary election ballot. CRS §1-4-104.5.

General Elections

Beginning 2013 and thereafter, all general, congressional vacancy, coordinated, odd-year and recall elections shall be conducted by mail. Voters may return their ballots via U.S. mail, drop them off at designated drop-off centers, or appear in person at a voter service and polling center and cast a vote. The official ballots shall be printed and in the possession of the clerk at least 32 days before every, odd-numbered year, congressional vacancy, and general election. C.R.S. §1-5-403.

Every ballot shall list the offices and questions in the order established by statute. For primary elections, candidate names shall be in the order of the vote as certified by the assembly. Candidates by petition follow the assembly candidates in an order established by lot. For general elections, ballot positions are assigned by lot drawing held between July 1st and July 15th. For both primary and general elections, the names of the joint candidates for president and vice-president and the joint candidates for governor and lieutenant governor shall be arranged in

alphabetical order. C.R.S. §§1-5-402 through 405, and 1-4-605. Home rule charter questions are allowed to be submitted at a coordinated or general election to be held within 60 days after the BOCC receives the proposed charter.

If an affidavit of intent of a write-in candidate is filed, at the end of the list of candidates for each office there shall be spaces equal in number to the number of persons to be elected to each office in which the voter may write in the name of qualified write-in candidates for each office. Write-in candidate votes cannot be counted unless the candidate has filed a notice of intent of write-in candidacy with the secretary of state (for statewide offices), or with the county clerk (for county offices). The affidavit of intent must be filed more than 60 days before the election or for nonpartisan elections, on the 64th day before the election. C.R.S. §§1-5-407, 1-4-1101 and 1102.

Election records (including ballots) are considered public records, but there are strict guidelines for their inspection by outside parties. CRS §24-72-205.5 Exceptions are allowed for law enforcement agencies. C.R.S. §24-72-204.

Printing and Distribution of Ballots

Clerks of counties using paper ballots or electronic ballot cards must have a sufficient number of ballots printed and distributed to the election judges in the respective polling places. Elections in which a ballot-on-demand system is used are not subject to this requirement. C.R.S. §1-5-410.

The clerk must provide judges a sufficient number of instruction cards to guide voters in preparation of their ballots. Election judges must post at least one of the cards in each polling location on Election Day. C.R.S. §1-5-504.

The clerk must provide sample ballots to the election judge in each polling location to be posted with the instruction cards. Sample ballots must be arranged in the same format as official ballots but printed on different colored paper. C.R.S. §1-5-413.

For counties using voting machines, the clerk must also prepare and place on each voting machine official ballot labels arranged the same as the official election ballot and shall deliver the voting machines to each polling location at least one day before the polling locations open. C.R.S. §1-7-402.

Provisional Ballots

In accordance with the Help America Vote Act (HAVA), Colorado statutes allow voters, who claim to be properly registered but whose qualification to vote cannot be immediately established, to cast a provisional ballot. C.R.S. § 1-8.5-101. Provisional ballot affidavits must include an attestation, a notice of perjury, a warning of the penalty for falsifying the affidavit and information needed to verify the elector's eligibility to vote and to subsequently register the elector to vote. C.R.S. § 1-8.5-103. Provisional ballots shall be counted for those electors who have been determined eligible to vote. C.R.S. § 1-8.5-106. State statutes also prescribe how provisional ballots should be counted in the event that an elector moves to Colorado or a different precinct right before an election. C.R.S. § 1-8.5-108.

Early In-Person Voting Procedures

Early in-person voting shall be available during regular business hours for a minimum of 15 days before any general election at a voter service and polling center. Early in-person voting shall be available for a minimum of 8 days before a primary and odd year coordinated election. CRS §1-5-102.9(2).

Each polling location shall provide handicap accessibility and on-line computer accessibility. Ballots and supplies shall be furnished in the same manner as supplies are provided for all elections. C.R.S. §1-5-703.

Certificates of Election

Except in contests requiring recounts, the clerk shall prepare and arrange delivery of “certificates of election,” or “certificates of nomination” in a primary election, for all candidates receiving the highest number of votes for county and precinct offices, immediately after preparation of the abstract of votes and shall deliver the certificates to the persons elected. C.R.S. §1-11-104.

COUNTY INITIATIVE & REFERENDUM POWERS

The debate over county initiative and referendum powers is one of the more interesting election issues to come along in recent years. Generally speaking, initiative power is the ability of a citizen (or citizens) to place a question on the ballot by obtaining a sufficient number of signatures on a petition and submitting it to the appropriate governing body. Referendum power, by contrast, is the ability of a governmental entity (county, legislature, etc.) to place a question on the ballot through legislative action. In Colorado, the state constitution guarantees the right of initiative for citizens at the statewide and municipal level.

The debate, however, centers on the right of initiative at the *county* level. Article V, Section 1(9) of the Colorado Constitution states, “The [statewide] initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every *city, town and municipality*...” (emphasis added). As the constitution makes no mention of initiative power at the county level, the courts have consistently ruled no such general initiative power exists.

Two separate state supreme court decisions have affirmed that the constitutional right of initiative does not exist at the county level. Dellinger, et al. v. BOCC of Teller County, No. 99CA0403, Sept. 14, 2000. (Colo. App. 2000). Save Palisade Fruit Lands, et al. v. BOCC of Mesa County, Civil Action No. 99-Z-2248 (D. Colo. 2000).

One important exception to this lack of county initiative power is the presence of a county home rule charter. State statute requires those counties adopting a county home rule charter to grant broad initiative powers to citizens of the county. C.R.S. §30-11-508. Currently, Pitkin and Weld counties are the only counties in Colorado to have adopted a home rule charter.

It is also important to note that while broad initiative authority at the county level is not enumerated in the state constitution, certain state statutes do allow for *limited* initiative power at the county level, the most noteworthy being recalls, county tax issues and home rule charters. County citizens in non-home rule counties may seek to place the following issues on the ballot by initiative:

- ◆ Recalls of county elected officials. C.R.S. §1-12-103 & 104
- ◆ Formation of a home rule charter committee. C.R.S. §30-11-502(1) et seq.
- ◆ Increasing the number of county commissioners from three to five (in counties having a population greater than 70,000). C.R.S. §30-10-306.5(3)(a)
- ◆ Decreasing the number of county commissioners from five to three (in counties having a population greater than 70,000). C.R.S. §30-10-306.7 (2)(b)
- ◆ Enacting a countywide sales tax ordinance. C.R.S. §29-2-104
- ◆ Establishment of a county library. C.R.S. §24-90-107(1) and (3)
- ◆ Establishment of public improvement district (PID) or a local improvement district (LID). C.R.S. §30-20-501 et seq. and C.R.S. §30-20-601 et seq., respectively.
- ◆ Establishment of various districts. C.R.S. §30-20-801 et seq.
- ◆ Prohibition on recreational marijuana businesses. Colorado Constitution, Article XVIII, Section 16(5)(f)

There is also some debate as to limits on county referendum power (that is, the ability of the board of county commissioners to place measures on the ballot), based on the fact that counties generally only have those powers that are explicitly set forth in statute. There are a number of limited county referendum powers enumerated in statute, including taxation issues, moving from three to five commissioners in counties with population greater than 70,000, allowing marijuana businesses and local broadband provision questions. C.R.S. 29-27-201(1)

When placing initiated or referred questions on the ballot, the county shall follow the same procedures used by municipalities. C.R.S. §30-11-103.5.