

Notice of Administrative Hearing To Consider A Protest Related to a Recall Petition

Thursday, May 20, 2021 at 9:00 a.m.

An administrative protest hearing to consider a protest related to a recall petition will be held virtually on Thursday, May 20, 2021, at 9:00 a.m. The Administrative Hearing will be conducted by Administrative Hearing Officer Karen Goldman, appointed by the Westminster City Council on October 12, 2020 by Resolution No. 37.

A formal protest submitted to the City Clerk's Office on Thursday, May 6, 2021 will be heard by Ms. Goldman starting at 9:00 a.m.

By no later than Tuesday, May 18, 2021 at 12:00 p.m. (noon), the protest filer must submit to Ms. Goldman via the City Clerk's Office, (cityclerk@cityofwestminster.us):

- Their preferred contact information
- A list of the Witnesses, with contact information, they intend to call
- A list of Exhibits they wish to present during the hearing
- Electronic copies of the Exhibits they wish to present during the hearing. The submittal of any hard copies of physical evidence will need to be arranged directly with the City Clerk's Office and take place by the deadline noted above.

All information, lists, and evidence submitted by the deadline will be compiled by the City Clerk's Office and transferred directly to Ms. Goldman by Wednesday May 19, 2021 and will be retained as part of the record of the hearing.

Only witnesses, the person who has filed a protest, that person's legal representative, the petition committee named as representing petition signers, the elected official named in the recall petition being protested, representatives of the City Clerk's office, and legal counsel will be allowed to speak during the hearing.

A link to join the virtual meeting will be sent to all relevant parties by Wednesday, May 19, 2021.

The proceedings of the Administrative Hearing will be livestreamed on the City's Youtube channel: <https://www.cityofwestminster.us/Government/CityCouncil/MeetingWebcasts>

Ms. Goldman will present a report of her findings no later than five (5) days after the conclusion of the hearing, in accordance with state statute.

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May 6, 2021

Michelle Parker
Westminster City Clerk
4800 W. 92nd Avenue
Westminster, CO-80031

Via Email: cityclerk@cityofwestminster.us

RE: Protest of the Certification of the Sufficiency of Petition to Recall Jon Voelz

Dear Clerk Parker:

Pursuant to Section 1-12-108(9) of Colorado's Uniform Election Code of 1992, and on behalf of my client Christopher Stimpson, I am submitting the enclosed protest of your certification that the petition to recall City Council Member Jon Voelz is sufficient to trigger a recall election. The certification of sufficiency must be rescinded because the petition has insufficient valid signatures and the conduct by the petition circulators substantially misled voters who signed the petition.

Section §1-12-108(9) provides the following protest right and process after a petition has been certified as sufficient:

(a)

(I) A recall petition that has been verified by the designated election official shall be held to be sufficient unless a protest in writing under oath is filed in the office of the designated election official by an eligible elector within fifteen days after the designated election official has determined the sufficiency of the petition under paragraph (c) of subsection (8) of this section.

(II) The protest shall set forth specific grounds for the protest. Grounds include failure of any portion of a petition or circulator affidavit to meet the requirements of this article or any conduct on the part of petition circulators that substantially misleads persons signing the petition. The designated election official shall forthwith mail a copy of the protest to the committee, together with a notice fixing a time for hearing the protest not less than five nor more than ten days after the notice is mailed.

(III) Every hearing shall be before the designated election official with whom the protest is filed or a designee of the designated election official appointed as the

hearing officer or before a district judge sitting in that county if the designated election official is the subject of the recall. The testimony in every hearing shall be under oath. The hearing shall be summary and not subject to delay and shall be concluded within thirty days after the protest is filed with the designated election official, and the result shall be forthwith certified to the committee.

(b) The party filing a protest has the burden of sustaining the protest by a preponderance of the evidence. The decision upon matters of substance is open to review, if prompt application is made, as provided in section 1-1-113. The remedy in all cases shall be summary, and the decision of any court having jurisdiction shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any judicial proceeding in a summary way.

Westminster's City Charter expressly incorporates the Colorado Uniform Election Code of 1992, including Section 1-12-108, into the Charter as applying to municipal elections.

City elections shall be conducted according to the provisions of the Colorado Municipal Election Code of 1965 (Article 10 of Title 31, C.R.S.) and the Uniform Election Code of 1992 (Article 1 to 13 of Title 1, C.R.S.), as said codes are amended from time to time, provided however, that when City Council finds it to be in the interest of the City, the Council may, by Ordinance, adopt provisions which modify or add to the provisions of said codes, and the provisions adopted shall prevail over any conflicting provisions in said codes. (Amended 11-7-95).

City Charter § 3.1. The City Council has never adopted any ordinances that conflict with the statutory right of an eligible elector to protest the Clerk's certification of the sufficiency of a recall petition.

The right to protest the Clerk's certification that a petition is *sufficient* is distinct from an eligible elector's right to file a protest before a petition is certified as being sufficient, or in the event a petition is deemed not sufficient. Colorado Revised Statute § 31-4-503 (which is not incorporated into the City Charter) provides: "A protest in writing under oath may be filed in the office of the municipal clerk by some registered elector who resides in the municipality within fifteen days after such petition is filed setting forth specifically the grounds of such protest." Such protest right arises upon the date a petition is filed and arises without regard to whether the petition has been determined to be sufficient. It is this distinct protest right that permits an eligible elector to protest a determination that a petition is not sufficient. Then, once a petition is certified as being sufficient, electors have separate right to challenge that determination within fifteen days the certificate of sufficiency is issued (regardless of the time between the date the petitions were filed and the date a clerk issues the certification of sufficiency).

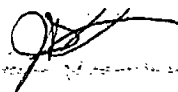
Importantly, the City Charter only incorporates the protest right under Section 1-12-108. The right to protest provided by Section 31-4-503 does not apply to Westminster municipal elections because that statute is not incorporated into the City Charter. *See* City Charter § 3.1 (incorporating “the provisions of the Colorado Municipal Election Code of 1965 (Article 10 of Title 31, C.R.S.)” but not incorporating Article 4 of Title 31, C.R.S.). Accordingly, the protest right under Section 1-12-108 applies to the petition recall against Mr. Voelz.

Any interpretation that treats the two distinct protest rights as one would violate important canons of statutory interpretation. The “primary objective” when interpreting statutory language is to “to ascertain and effectuate the intent of the general assembly.” *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010). To do so, the initial task is “to determine whether the statutory language has a plain and unambiguous meaning.” *Fischbach v. Holzberlein*, 215 P.3d 407, 409 (Colo. App. 2009). “[I]f the statutory language is clear,” the statute must be applied as written. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1089 (Colo. 2011). Moreover, the application of the statute will give effect to legislative intent by construing all parts of a statute as consistent, harmonious, and sensible. *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L. by & through Loveland*, 325 P.3d 1014, 1019 (Colo. 2014). To that end, the Clerk must avoid interpreting statutory schemes in a way that make words or sections superfluous. *Larson v. Sinclair Transp. Co.*, 284 P.3d 42, 47 (Colo. 2012).

As you will see in the Affidavit by Christopher Stimpson, his protest meets all the requirements for a protest under Section 1-12-108(9). Mr. Stimpson is an eligible elector for Westminster’s municipal elections. His protest is being made in writing and under oath. And his protest is timely because it has been submitted within fifteen days from your certification of sufficiency on April 28, 2021.

Please let me know if you have any questions. I look forward to receiving your notice of hearing.

Sincerely,



Jerome A. DeHerrera

Westminster City Clerk
4800 W. 92nd Avenue
Westminster, CO 80031

In the Matter of the Petition to Recall City Councilor Jon Voelz

AFFIDAVIT BY CHRISTOPHER STIMPSON

I, Christopher Stimpson, after being duly sworn, testify as follows:

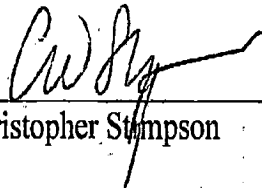
1. I am over the age of eighteen years.
2. I am a resident of Westminster, Colorado.
3. I live at 11133 Vrain Street, Westminster, CO 80031.
4. I am a registered voter who is eligible to vote in Westminster Municipal Elections.
5. I am protesting the Westminster City Clerk's determination that the petition to recall City Council Member Jon Voelz is sufficient to trigger a recall election.
6. I am protesting because the petition failed to meet the requirements of the Westminster City Charter, the Westminster Municipal Code, and the Colorado Revised Statutes.
7. In particular, as shown in the Appendix attached to my affidavit, the petition does not have sufficient valid signatures as required by the Westminster City Charter, the Westminster Municipal Code, and the Colorado Revised Statutes.
8. The Appendix shows that all the signatures in Section 33 should be rejected because this section has improper petition sections and line numbers.
9. The Appendix also shows that all the individual signatures identified by

"Section" and "Line" should be rejected for the various reasons identified in the "Objection" column.

10. In addition, as will be shown through evidence at the protest hearing, conduct by the petition committee and their signature collectors substantially misled persons who signed the petition.

11. For these and other reasons, the petition to recall Council Member Voelz did not satisfy the requirements in the Westminster City Charter, the Westminster Municipal Code, and the Colorado Revised Statutes, and is therefore insufficient to trigger a recall election.

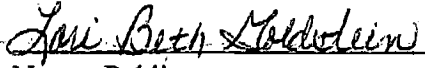
12. My testimony is true and accurate to the best of my knowledge, information, and belief.



Christopher Stimpson

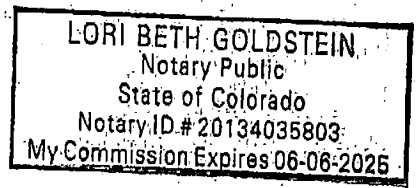
STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing affidavit was signed and acknowledged before me on this 6 day of May 2021 by Christopher Stimpson.



Notary Public

My Commission Expires: 6/6/2025



APPENDIX TO CHRISTOPHER STIMPSON AFFIDAVIT

Protest to Jon Voelz Recall Petition

Packet Protest

Section	Objection
33	Improper petition sections and line numbers

Signature Protests

Section	Petition Line (Clerk Line)	Objection
25	1	Improper Date
32	9 (6)	Inactive Voter
33	Page 4 Line 7 (7)	Petition address not same as registration
33	Page 14 Line 3 (60)	No address
34	1	Petition address not same as registration
34	3	Illegible Date
34	33	Improperly Signed
34	38	Not Registered on date, Petition address not same as registration
34	43	Illegible
34	80 (72)	Petition address not same as registration
34	98 (90)	Illegible
36	10	Illegible, Petition address not same as Registration
36	12	Unidentifiable by Name
36	20	Unidentifiable by Name
37	4	no address
37	13	Unidentifiable by Name
37	31	Improper Date
37	37	Improperly Signed
37	43	Unidentifiable by Name
37	57	illegible
37	62 (63)	Illegible
37	65 (66)	Unidentifiable by Name
37	75 (67)	Improper Date
37	80 (72)	Not a signature
37	85 (77)	Illegible
37	87 (79)	Illegible

May 6, 2021

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43	13	Unidentifiable by Name
43	62	City Listed Incorrectly
43	104 (96)	Petition address not same as registration
43	95 (87)	Petition address not same as registration
44	2	Petition address not same as registration
44	5	Petition address not same as registration
44	19	Illegible Date
44	31	Not a signature
44	32	Improperly Signed
44	33	Improperly Signed
44	36	Ineligible, Unidentifiable by Name
44	38	Petition address not same as registration
44	54	Unidentifiable by Name
45	55	no record in VAN
45	60	no record in VAN
45	76 (68)	Illegible
49	82	Improperly Signed
49	83	Improperly Signed
51	40	Not Registered on Date, Petition address not same as registration
51	65	Improperly Signed
53	2	County Listed Incorrectly
53	3	Not Registered on Date, Petition address not same as registration
53	7	Improperly Signed
53	8	Same Handwriting
53	11	Illegible, Petition address not same as Registration
53	37	Improperly Signed
53	44	Illegible
53	47	Illegible
53	50	Improperly Signed
53	51	Improperly signed, date illegible
53	55	Not Registered on Date, Petition address not same as registration
53	62 (63)	Illegible

60	2	Illegible Date
61	6	Improper Date
61	76 (68)	Illegible date
68	22	Unidentifiable by Name
69	13	Improper Date
69	14	Improper Date
69	15	Improper Date
69	22	Unidentifiable by Name
78	11	Petition address not same as registration
78	17	Unidentifiable by Name
78	21	Petition address not same as registration