

## CHAPTER 13: RECOUNT

### RECOUNT OVERVIEW

The purpose of a recount, whether mandatory or requested, is to re-tabulate all ballots cast and counted in an election. A recount does not involve a review of envelope signatures.

The canvass board must certify the original vote count before the clerk and may conduct a recount. If an interested party believes the recount is not fair, impartial, and uniform, it may petition the Denver District Court to require the Secretary of State's office to conduct the recount. Watchers may be present during a recount and may file complaints in accordance with Election Rule 13.

For any recount detailed below, if the race or issue crosses county boundaries, the clerk must count the total number of votes cast in all counties.

### MANDATORY RECOUNTS

When does a mandatory recount occur? There are 2 triggers:

If only one person will be elected to office	 The difference between the highest number of votes cast (the winning candidate) and the next highest number of votes cast (the runner-up) is less than or equal to one-half of one percent of the highest votes cast.
If more than one person will be elected to office	 The difference between the votes cast for the winning candidate with the least votes (lowest winner) and the losing candidate with the most votes (the first runner-up) is less than or equal to one-half of the percent of votes cast for lowest winner.

As an example, if Candidate #1 receives 200 votes and Candidate #2 receives 198 votes, the difference between the two is 1%. 1% is greater than .5%, therefore a recount is not mandatory. To help you calculate whether a recount is mandatory, we created a recount calculator that can be found on Clerk's Corner under Election laws, rules, & resources> Policy and legal resources> Resources. Once you enter the votes in the form, it will automatically calculate whether a recount is required.

Except for requested recounts, the entity (e.g. school district, municipality, etc.) that certified the candidate, ballot question, or ballot issue to the ballot will pay for recount. The clerk must provide notice of the recount to all necessary individuals or groups. A political subdivision that referred a

ballot issue or question to the electors may waive an automatic recount if the question fails, by giving notice to the clerk and recorder within 23 days after the election.

[Section 1-10.5-101 & 103 C.R.S.]

The Secretary of State will order a mandatory recount for state races no later than the 30<sup>th</sup> day following the election. In this context a “state race” is any race that was certified to the ballot by the Secretary of State, including state legislative races. The county clerk’s office determines when to order a mandatory recount of any other race but may only do so after it has submitted the official abstract of votes cast. Mandatory recounts must be completed no later than the 35<sup>th</sup> day following the election.

[Section 1-10.5-102 & 103 C.R.S.]

## **REQUESTED RECOUNTS**

If the certified vote count does not trigger a mandatory recount, an interested party may request one. Refer to section 1-10.5-106, C.R.S. for the definition of an “interested party.” The interested party must submit a “notarized written request” to the body that certified the candidate or question to the ballot. This means that for state legislative races, you should direct the interested party to contact the Secretary of State’s office. This request must be received no later than 28 days after the election.

The interested party must also pay for the recount after the clerk provides a cost estimate. The clerk has one day following the official request for a recount to submit a cost estimate to the interested party, and the interested party has one day following their receipt of the cost estimate to pay for the cost of the election. The clerk must use the recount cost estimate form provided by the Secretary of State. Any funds received from an interested party must be placed in escrow until the recount has been completed. If the recount results in a reversal of the results, the interested party will get their funds back. If the results are not overturned, then the clerk keeps the funds to cover the cost.

Requested recounts must be completed no later than the 37<sup>th</sup> day following the election.

[Section 1-10.5-106]

## **CONDUCTING A RECOUNT**

The canvass board is in charge of conducting the recount. If any member of the canvass board cannot participate, then the clerk may appoint a new person in the same way that the appointed members of the canvass board. The canvass board can employ clerks and assistants as needed to help it conduct the recount. Ultimately, the canvass board’s role in conducting the recount is to select ballots for the random test, observe the recounting of ballots, and to certify the results.

[Section 1-10.5-107; Election Rule 10.11]

To begin the recount process, a county clerk who conducted a comparison risk-limiting audit should review their discrepancies from the audit. If the county finds that the audit showed no discrepancies in the recount contest, then the county is not required to re-scan ballots. However, if the losing candidate with the most votes, or an interested party, requests the county to re-scan ballots, then the county must take this step, regardless of the result of the risk-limiting audit. This request must be made no later than the day after the deadline to order or request a recount.

[Election Rule 10.9]

If the county is required to re-scan ballots, then it must first test all ballot scanners that will be used in the recount. See Election Rule 10.12.2 (a) for details on how to conduct this test. If there are no discrepancies during this test, then the recount must be tabulated in the same way that ballots were tabulated during the election. In most counties, this will mean re-scanning the ballots.

A recount is conducted by hand only if the test conducted under Rule 10.12.2 reveals discrepancies that cannot be resolved.

Regardless of how a recount is conducted, every overvote, undervote, blank vote, ambiguous mark, and write-in vote in the race subject to recount must be reviewed and resolved in accordance with the Voter Intent Guide. This is true even if a county is not required to re-scan ballots at all.

[Election Rule 10.9, 10.12, 10.13]

## USEFUL RESOURCES

- Relevant trainings on this topic include:
  - Elections 101
  - Logic and Accuracy Testing
  - Watchers and Observers
- Relevant forms include:
  - County Recount Calculator

## BEST PRACTICES

Remind individuals who are considering requesting a recount that in the majority of cases a recount must be conducted using a scanner, not by hand count. In many cases people who request a recount are under the incorrect impression that the recount will be conducted by hand.

Recounts should be transparent to remove any appearance of impropriety and instill confidence for voters. The clerk may want to prepare a recount handout or conduct an orientation that will explain the rules and procedures to any interested parties.

Because recounts are not routine occurrences, the county clerk may wish to provide an additional training session to the election judges that will assist in a recount.