

Special District Elections in Colorado

Colorado special districts (also known as “Title 32 districts” because they are organized pursuant to Title 32, C.R.S.) include water and sanitation districts, fire protection districts, park and recreation districts, and metropolitan districts (among others). Since approximately 2000, the overwhelming majority of these special districts are metropolitan districts, organized to finance infrastructure in newly developed subdivisions.

1. Cycle of Special District Elections

Special district elections through the year 2022 are held the first Tuesday after the first Monday in May in even-numbered years. Board members are elected ordinarily for 4-year terms. The exceptions to this rule are that Board members appointed to fill a vacancy must stand election for the remainder of their term at the next election (example: a Board member appointed to fill a vacancy for a term to expire in 2023 would still be required to stand for election at the 2022 regular election, for the remaining 1 year of the term). In addition, Board members elected in 2020 and 2022 are elected to 3-year terms to facilitate a transition of the election cycle from even-year cycles to odd-year cycles as described below.

Beginning in 2023, special district elections will be held the first Tuesday after the first Monday in May in odd-numbered years. The legislature made these changes to facilitate county clerks in coordinating special district elections without conflicting with their other duties to primary elections that are held in even-numbered years; and to allow for greater visibility of special district elections without competition with the primary elections. To accomplish this change, the terms of offices up for election in 2020 expired in May, 2023 and the terms of offices up for election in 2022 expire in 2025.

Board member terms are staggered so that on any 5-member Board, 3 of the positions expire in one cycle and 2 positions in another cycle and on any 7-member Board, 4 positions expire in one cycle and 3 positions in another cycle.

2. Conduct of Special District Elections

Special district elections are conducted pursuant to the Colorado Local Government Election Code, C.R.S. 1-13.5-101 et seq. Local government election may be conducted by either coordinating elections with the county clerk along with other state and local elections occurring at the same time; or by an independent mail ballot election handled by a designated election official who was appointed by the Special District Board of Directors. C.R.S. 1-13.5-1101 et seq. The vast majority of special district elections are conducted as independent mail ballot elections. Typically, the designated election official is either an attorney or paralegal in the law firm of the District’s general counsel, an employee of the manager of the district, or for recently created special districts it may also be an employee of the developer.

Independent mail ballot elections are conducted in a similar manner as elections coordinated by the county clerk, and ballots are required to be mailed to every eligible elector who resides within the special district boundaries. C.R.S. 1-13.5-1103. In addition, the designated election official must comply with the Uniform Military and Overseas Voters Act, C.R.S. 1-8.3-101 et seq. The ballots must conform with state statutes and therefore appear substantially the same as ballots for state and local elections. However, they are returned directly to the Designated Election Official and not the county clerk.

3. Eligible Electors

The Special District Act defines eligible electors differently from the usual definition in other state elections. C.R.S. 32-1-103(5) includes the following in the definition of eligible electors for special district elections:

- a) A person who is registered to vote in Colorado and is a resident of the special district or the area to be included in the special district,
- b) A person who is registered to vote in Colorado and owns taxable property in the special district or the area to be included in the special district,
- c) A person who is registered to vote in Colorado and whose spouse owns taxable property in the special district or the area to be included in the special district,
- d) A person who is registered to vote in Colorado and is obligated to pay taxes under a contract to purchase taxable property situated within the special district or the area to be included in the special district.

This last provision (i.e., qualifying as an eligible elector under a contract to purchase property) originally applied to the situation where a person enters into a contract for deed or lease-to-purchase contract whereby after a period of time making satisfactory payments they would eventually own the property. However, in recent years it has been used as the predominant tool by which employees or affiliates of a developer with no meaningful ownership of the property or obligation to pay taxes qualify as electors and are elected to the Board. For example, contracts to purchase may include option contracts where for a nominal amount such as a dollar, the developer affiliate obtains an option to purchase a negligible fraction of the property (for example, 5% interest in a 20-foot by 20-foot piece of vacant land) for some extremely high price (perhaps 10 times or 100 times fair market price). Although the contracts state that there is an obligation to pay taxes, the contracts generally say the owner/developer has no recourse for the failure to pay taxes except perhaps the right to cancel the contract and return all amounts paid. Accordingly, some of these contracts in the past have been held by the Colorado Court of Appeals to be sham contracts.

The Special District Act of 2016 limits the ability to qualify eligible electors through the use of these contracts. However, the contracts may be used to purchase in situations where there are less than 11 eligible electors in the special district, or there are unfilled vacancies on the Board and no one has come forward to fill the vacancies after publication of the notice, or there are fewer nominees for a board election than positions to be filled. C.R.S. 32-1-808.

4. Nomination Procedure

The Designated Election Official must publish and post a call for nominations between 75-100 days before the regular election date.

Candidates for special district board positions must be eligible electors of the special district. To become a candidate, the eligible elector fills out a self-nomination and acceptance form available from the designated election official. C.R.S. 32-13.5-303. The template of such a form (SD-7) is posted on the Department of Local Affairs website, [Special District Election Forms | Department of Local Affairs \(colorado.gov\)](https://www.colorado.gov/pacific/dola/Special-District-Election-Forms). The self-nomination petition must be returned to the designated election official no earlier than January 1 of the year of the election and no later than the close of business (normally 5:00 pm) 67 days prior to the election (February 25, 2022 for this year's election). A person may submit an affidavit of intent to be a write-in candidate no later than the close of business 64 days prior to the election (February 28, 2022, for this year's election).

The self-nomination form must be signed by the candidate and must also be witnessed by an eligible elector of the state who also signs the form. The other information on the form must also be “printed” by the candidate and/or witness. Designated election officials have rejected self-nomination petitions for technical non-compliance (such as “typing” instead of “printing” in wet ink their names, addresses, etc., or the date of signature of the witness appears to be printed by someone other than the witness). In the event the petition is rejected for technical noncompliance, the statute allows only one opportunity to cure. CRS 1-4-912.

5. Cancellation of Elections

Elections may be cancelled, and the candidates deemed elected if on the day after the deadline for affidavits of intent to be a write-in candidate (63 days before the election or March 1, 2022, for this year’s election) there are not more candidates than positions to be filled and there are no other ballot issues to be decided. Note that in determining this, candidate for terms ending in different years are considered separately. So, for example if there is 1 candidate for 2 three-year term positions and 2 candidates for a 1-year term, the election would not be cancelled.

If an election is cancelled, the designated election official publishes and files with the county clerk a Notice of Cancellation and Certified Statement of Results (form SD-11 on the DOLA website) [Special District Election Forms | Department of Local Affairs \(colorado.gov\)](https://cdola.colorado.gov/special-district-election-forms) Open the link Documents for Cancelled Election and then open form SD-11)

Elections Not Cancelled

If an election is not cancelled, it proceeds as either a coordinated election (with the County Clerk conducting the election) or an independent mail ballot election. If the Board of the Special District passes a resolution, the election may be conducted as a ranked choice election.

Other special district election forms and deadlines are available at the Department of Local Affairs website, <https://cdola.colorado.gov/special-district-election-forms>

6. Special Provision for Non-Resident Property Owners to Vote

Special district elections authorize non-resident property owners who are natural persons and are registered to vote in Colorado (including spouses of property owners, or persons or spouses of such persons under contract to purchase property) to vote. Many of these property owners may not be known to the designated election official nor may they be on the assessor’s list of property owners (for example in the event of private option contracts used to qualify developer affiliates, which need not be recorded). Instead, the designated election official must provide a ballot on request to anyone who submits a Self-Affirming Oath or Affirmation that they are an eligible election (form SD-36 or 36.2). [Special District Election Forms | Department of Local Affairs \(colorado.gov\)](https://cdola.colorado.gov/special-district-election-forms) Open the link to Polling Place Election and then open form SD-36 or SD-36.2.

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