

1 Tara Fugina  
Office of the County Attorney  
2 Flathead County, Montana  
820 South Main  
3 Kalispell, MT 59901  
(406) 758-5630  
4 Attorney for Flathead County  
5

6 IN THE DISTRICT COURT FOR THE ELEVENTH JUDICIAL DISTRICT  
7 OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

8  
9 *In re* the November 7, 2023, ) Cause No. DV-23-  
10 Kalispell Municipal General Election )  
11 ) **PETITION TO ANNUL ELECTION**  
12 )  
13 )

---

14 COMES NOW, the Flathead County Election Administrator Debbie Pierson, by and  
15 through Deputy Flathead County Attorney Tara Fugina, and moves this honorable Court for  
16 consideration of this Petition to Annul Election and order a new election be conducted.

17 **INTRODUCTION**

18 The Flathead County Election Department is responsible for conducting municipal  
19 elections. The municipal general election for the City of Kalispell was held on November 7, 2023,  
20 the time proscribed by statute. However, less than one week before the election, it came to the  
21 attention of the Flathead County Election Department that some absentee voters may have received  
22 ballots for incorrect wards. The Election Department investigated and discovered in the coming  
23 days that the ward boundaries approved by the City of Kalispell in December 2021 had not been  
24 entered into the election system. *See* attached Exhibit A, 2023 Municipal General Election Canvass  
25 Report, submitted to the Flathead County Board of County Canvassers (Flathead County Board of  
26 Commissioners) on November 21, 2023.  
27

1 The result of this error impacted 1,413 eligible voters, 8% of the total eligible voters in the  
2 City of Kalispell. It is impossible to determine the exact effect because after having been alerted  
3 to the problem, the Kalispell City Manager requested and received a statement from the Election  
4 Administrator that was read at the November 6, 2023, City Council meeting. Such information  
5 could possibly have influenced a person's decision on whether or not to vote. It is known, though,  
6 that 176 voters received an incorrect ballot who voted.

### 7 DISCUSSION

8 While the common perception is that a candidate or elector may challenge an election  
9 within five days, the actual statute of limitations for annulment of an election is one year. Further,  
10 while there is no clear path for an Election Administrator in her official capacity to either stop or  
11 annul an election, § 13-36-102, M. C. A., states:

12  
13 Time for commencing contest. (1) Five days or less after a candidate has  
14 been certified as nominated, a person wishing to contest the nomination to any  
15 public office shall give notice in writing to the candidate whose nomination the  
16 person intends to contest, briefly stating the cause for the contest. The contestant  
17 shall make application to the district court in the county where the contest is to be  
18 had. The judge shall then set the time for the hearing. The contestant shall serve  
19 notice 3 days before the hearing is scheduled. The notice must state the time and  
20 place of the hearing.

21 *(2) Any action to contest the right of a candidate to be declared elected to  
22 an office or to annul and set aside the election or to remove from or deprive any  
23 person of an office of which the person is the incumbent for any offense mentioned  
24 in this title must, unless a different time is stated, be commenced within 1 year after  
25 the day of election at which the offense was committed.*

26 *(emphasis added.)* This statute states that there is a right to petition for annulment and ask the  
27 election be set aside, but it does not clearly specify that an Election Administrator may do so.  
However, because of the manifest error in the election process for the City of Kalispell, the  
Election Administrator feels it is her duty to attempt to annul this election and conduct a new one.  
To her knowledge, no one else to date has filed an action to challenge this election in the District  
Court.

1 As for the specific candidate races in the Kalispell election, there was one uncontested race  
2 for a municipal judge. That race was not affected by ward boundaries because it was a city-wide  
3 race. There were four City Council races, one of which was uncontested. However, the adjustment  
4 of ward boundaries will necessarily impact all four wards. Therefore, it is appropriate to conduct  
5 a new election for the four City Council races (Wards 1, 2, 3, and 4), but not necessary for the  
6 municipal judge race.

7 **CONCLUSION**

8 The Flathead County Election Administrator asks this Court for an Order annulling the  
9 November 7, 2023, election and to conduct a new election for the four City Council races. All  
10 costs will be borne by the Flathead County Election Department. This Petition will be posted on  
11 the Flathead County Elections Department website for the public's review, and notice will be  
12 published in the *Daily Inter Lake*.

13 DATED this 1st day of December, 2023.

14 OFFICE OF THE COUNTY ATTORNEY  
15 Flathead County, Montana

16  
17 By /s/ Tara R. Fugina  
18 Deputy  
19  
20  
21  
22  
23  
24  
25  
26  
27



DEBBIE PIERSON  
**FLATHEAD COUNTY ELECTION ADMINISTRATOR**

CLERK & RECORDER/AUDITOR/SURVEYOR  
290 North Main Street, Suite B - Kalispell, Montana 59901

Phone: (406) 758-5535

Fax: (406) 758-5877

Website- [flathead.mt.gov/department-directory/election](http://flathead.mt.gov/department-directory/election)



## 2023 Municipal General Election Canvass Report

### Canvass Process Overview:

Title 13, section 15-401 calls for the governing body to serve as the Board of County Canvassers. The canvass process evaluates the comparison of the number of ballots voted to the number of ballots tabulated. The canvass report as outlined in 13-15-404, is required to include: the total number of electors voting in each city, or city ward; the name of each candidate running for office; the number of votes received per candidate or ballot issue; the number of write-in votes received. The canvass includes reviewing returns, auditing records of votes cast, reviewing totals and declaring or certifying the results. In Flathead County, the secretary to the Board of County Commissioners keeps minutes of the proceedings on behalf of the County Election Administrator.

### COLUMBIA FALLS:

- 3,271 ballots were mailed to Columbia Falls city voters on October 23<sup>rd</sup>, 2023. This was an all-mail ballot election.
- Voted ballots returned were 876 or 27%.
- Review of ballot results and resolution spreadsheet.
- The Election Administrator recommends certification of the results of this election.

### WHITEFISH:

- 6,290 ballots were mailed to Whitefish city voters on October 23<sup>rd</sup>, 2023. This was an all-mail ballot election.
- Voted ballots returned were 2,311 or 37%.
- Review of ballot results and resolution spreadsheet.
- The Election Administrator recommends certification of the results of this election.

## KALISPELL:

- Kalispell city has a total of 16,894 eligible voters. 5,745 are poll voters and 11,149 are absentee.
- Kalispell city absentee voters were mailed ballots on October 23<sup>rd</sup>, 2023. The poll election was conducted at the Fairgrounds Trade Center on November 7, 2023.
  - Voted ballots returned were 2,869, or 26% absentee and 239, or 4% poll.
  - Review of ballot results and resolution spreadsheet.
  - The Canvass numbers as presented are accurate for the election conducted. However, ballots were not distributed according to ward boundaries updated in December of 2021. Concerns exist; however, the Election Administrator recommends certification of the results of the election (MCA 13-15-405). Once completed, MCA 13-36-102 allows for a candidate to contest the nomination. "The contestant shall make application to the district court in the county where the contest is to be had." The Flathead County Election Administrator fully supports readministering the November 7, 2023, Kalispell municipal election for wards one through three. (The races in ward four were non contested). Ward boundaries will be updated in the election database and ballots distributed according to boundary lines approved by Kalispell city council in December of 2021. A minimum of 60 days is needed to complete printing, ballot distribution, required postings, ballot acceptance, tabulation, and candidate canvass and certification. Flathead County Elections Department is willing to cover all expenses associated with readministration of the election.

### Concerns:

In the final days prior to the November 7, 2023, municipal general election, the election office became aware that there may have been an issue with the Kalispell city ward boundaries utilized for ballot distribution. Research was conducted which indicated that the updated boundary lines approved by the city council in 2021 that were based on updated census data, were never entered into the election system by the Flathead County Election Department. This was an extremely unfortunate clerical error.

Of the 16,894 total eligible voters in Kalispell city, the boundary line impacts were as follows:

- 1,413 Total eligible voters impacted (8%)
  - 1,312 Eligible voters with ward changes.
  - 101 New annexations (99 into ward four, two into ward two, none for ward one or three).
- 176 Total voters receiving an **incorrect** ballot who **VOTED**:
  - 112 Voted ballots for ward one where the voter should have received a ward two ballot.
  - 12 Voted ballots for ward one where the voter should have received a ward three ballot.
  - 37 Voted ballots for ward two where the voter should have received a ward three ballot.
  - 6 Voted ballots for ward three where the voter should have received a ward two ballot.
  - 9 Voted ballots for ward three where the voter should have received a ward four ballot.