BEFORE THE CITY CLERK OF THE CITY OF LOUISVILLE, COLORADO

In re: Initiative Petition to Amend Chapter 3.18, Louisville Municipal Code (Development Impact Fees)

PROTEST

Introduction

Protestors, Tim Bierman, Don P. Brown, Jr., and Karen Brown, registered electors of the City of Louisville, Colorado, hereby submit this Protest under C.R.S. § 31-11-110 against the sufficiency and validity of the initiative petition to amend Chapter 3.18 of the Louisville Municipal Code regarding development impact fees. This City Clerk has jurisdiction to hear this protest pursuant to C.R.S. § 31-11-110(1). Protestors have standing as residents and registered electors of the City and have timely filed this Protest within forty days of the petition's filing. Protestors respectfully request that the City Clerk conduct a hearing, declare the petition insufficient and invalid, and refuse to certify the proposed initiative to the ballot.

I. Background

On July 2, 2025, petition representatives filed an initiative petition seeking to amend Chapter 3.18 of the Louisville Municipal Code regarding the impact fees imposed on impact-generating development in the City. Under current ordinance, the City imposes impact fees for library capital facilities, transportation capital facilities, and parks and trails capital facilities. This initiative seeks to expand impact fees for capital facilities to include the following categories: library, transportation, parks and trails, open space, recreation, emergency services, municipal buildings, water, wastewater, sewer, flood control, and affordable housing. In addition to expanding the categories of capital facilities subject to impact fees, this initiative also seeks to make significant changes to how the City administers impact fees by mandating the preparation of a new impact study by Juned 1, 2026; mandating the preparation of an updated impact fee study by an independent entity at least once every five years; and mandating the formation of an Impact Fee Liaison Committee comprised of private individuals to advise City staff during the development of the impact fee study.

II. The Initiative Proposes an Administrative Measure, Not a Legislative Act, and Therefore Lies Outside the Scope of the Initiative Power

Under Colorado law, citizens' initiative power extends only to measures that are legislative in character; administrative or executive matters are not subject to initiative or referendum. *Vagneur v. City of Aspen*, 2013 CO 13, ¶ 33. The Colorado Constitution reserves to local electors the power to enact "municipal legislation" by initiative, but by the same token prohibits the exercise of administrative or executive powers by the electorate. This limitation is rooted in separation of powers principles: the people's reserved lawmaking power may be used to set general policies and laws, but not to interfere in the administration or execution of existing laws. *Id.* The Colorado Supreme Court has accordingly held that a proposed municipal initiative must be a valid exercise of legislative power; if it is administrative in character, it "**may not be placed on the ballot.**" *Id.*

A. Legal Standard

Colorado courts apply well-established tests to distinguish legislative proposals from administrative acts. An action is legislative if it formulates a policy or rule of general and permanent applicability, whereas actions taken to carry out already-established policies or that address only a temporary, specific, or managerial matter are *administrative*. *City of Aurora v. Zwerdlinger*, 194 Colo. 192, 196, 571 P.2d 1074, 1077 (1977); *Margolis v. District Court*, 200 Colo. 70, 75 (1980) (quoting *Zwerdlinger*). Thus, "acts constituting a declaration of public policy are deemed to be legislative," but acts "necessary to carry out existing legislative policies and purposes" are administrative. *City of Idaho Springs v. Blackwell*, 731 P.2d 1250, 1254 (Colo. 1987).

Likewise, measures dealing with subjects of a permanent and general character (affecting the community at large) tend to be legislative, whereas those that are episodic or directed at day-to-day operations are administrative. *Zwerdlinger*, 194 Colo. at 195–96. The fundamental inquiry is whether the proposal makes new law of general applicability (legislative) or instead meddles with the execution of existing law or policy (administrative). If a proposed initiative "exceeds the proper sphere of legislation and instead attempts to exercise administrative or executive powers," it is not a valid initiative and cannot be submitted to voters. *Blackwell*, 731 P.2d at 1253.

Colorado case law applying these tests has invalidated local initiatives that intrude into administrative matters. For example, in *Zwerdlinger,* the Colorado Supreme Court held that an ordinance setting municipal utility rates was administrative and not subject to referendum because it executed an existing policy (maintenance of a city utility) and involved complex fluctuating facts not suited to direct popular determination. In *Blackwell*, an initiated ordinance to block the City's chosen site for a new city hall was deemed administrative, since selecting a specific property to implement a voter-approved capital project was merely carrying out an existing legislative decision (the decision *to* build a city hall). And in *Witcher v. Canon City,* 716 P.2d 445, 449 (Colo. 1986), the Court warned that subjecting the routine decisions city officials must make in managing municipal assets to direct vote would "**result in chaos and bring the machinery of government to a halt.**" (Emphasis added.)

Likewise, in *Vagneur v. City of Aspen*, citizens attempted to initiate ordinances prescribing detailed requirements for the design and location of a highway project—thereby overruling prior administrative decisions and dictating future staff conduct. The Colorado Supreme Court held those initiatives improper, squarely concluding that they were "administrative in character and therefore are not a proper exercise of the people's initiative power." 2013 CO 13, ¶ 1. The initiatives in *Vagneur* sought to "mandate specifics" of an ongoing administrative project and "intrude[d] on administrative responsibilities of city staff," which the Court deemed a misuse of the initiative process. *Id.* ¶ 2. As the City of Aspen's hearing officer in that case aptly observed, to allow voters by initiative "to either dictate or negate administrative actions normally undertaken by city staff is a misuse of the process." *Id.* at ¶ 27.

Stated simply, an initiative that directs how city employees and officials perform their jobs, or that wrests control of administrative processes away from the City's executive branch, is not a valid legislative measure.

B. The Proposed Measure is Administrative, Not Legislative

Applying the above principles here, the initiative to amend Chapter 3.18 is *administrative* in nature. While cloaked as an ordinance, the measure does not primarily establish a broad policy of general applicability; rather, it prescribes *administrative machinery and directives* for the City's management of development impact fees. The existing Chapter 3.18 of the Louisville Municipal Code already establishes the legislative policy that new development should pay its proportionate share of certain capital facility costs (through impact fees). The proposed initiative does not reverse or reject that policy—instead, it would *extend and operationalize* it in a highly specific manner, specifying new categories of fees and prescribing detailed procedures on City staff. In substance, the measure would tell City officials what studies to perform, when to perform them, how to involve certain committees and consultants, and how to update fee calculations. These are details of implementation and administration, not fundamental policy choices.

The City of Louisville's Home Rule Charter reinforces the division between legislative and administrative functions. Louisville operates under a City Manager form of government. Louisville Home Rule Charter, § 2-3. The elected City Council (including the Mayor) is the City's legislative body, responsible for exercising all powers of local government not conferred on others and for making policy decisions via ordinances. A professional City Manager, in turn, is appointed by the Council to serve as the chief executive and "chief administrative official of the City." Louisville Home Rule Charter § 8-3(a)(2).

The Charter assigns the City Manager broad authority to implement the Council's laws and decisions and to manage the City's day-to-day operations—for example, the

Manager must enforce all ordinances and contracts, prepare budgets and reports, and "exercise supervision and control over all City personnel and departments." Correspondingly, the Charter explicitly prohibits Council members from interfering with the City Manager's discharge of these administrative duties. Louisville Home Rule Charter, § 8-5(b). Neither the Council nor any of its members may "dictate or interfere with the appointment of, or the duties of, any City employee" who is subordinate to the Manager, nor may Council members give any direct orders to such City employees. *Id.*

This structural separation of powers is intended to prevent exactly what the initiative here proposes to do—namely, allow those other than the City Manager to usurp or micromanage the City's administrative functions. In short, Louisville's Charter confines administrative tasks to the City Manager and her administration, while reserving legislative matters to the Council (or to the voters when acting in a legislative capacity), underscoring that an initiative must not cross into administrative territory.

Several features of the initiative confirm its administrative character. First, the measure mandates the preparation of a new impact fee study by a fixed deadline (June 1, 2026) and requires that impact fee studies be updated every five years thereafter. Establishing a recurring schedule for staff to update technical studies is a quintessential administrative directive—it concerns the ongoing management and evaluation of City programs. Setting timelines and requiring periodic consultant reports is part of executing policy, not making new policy. A voter initiative may properly decide whether the City should impose development fees in general (a policy question) but dictating when and how staff must conduct fee studies to keep data current is an intrusion into administrative planning. Here, the legislative policy was set by the original impact fee ordinance; the initiative's new study mandate would dictate the detailed execution of that policy, indicating an administrative measure.

Second, the initiative creates an "Impact Fee Liaison Committee" of citizen appointees to advise City staff and consultants during development of the impact fee study. This committee must be formed every five years and comprised of representatives from various City boards and commissions. The measure thus injects a new advisory body into the City's internal process of formulating impact fee recommendations. An initiative forcing the creation of a specific committee to oversee a staff function is, in effect, managing the municipality's internal workings by ordinance. This clearly crosses into the executive/administrative realm, much like the initiatives in *Vagneur* that attempted to manage city staff's project implementation tasks.

Third, and critically, the proposed ordinance delegates significant decision-making authority to a private consultant and a citizens' committee without meaningful standards or City Council control. The measure requires that the recurring impact fee study be "produced by an independent entity and guided by an Impact Fee Liaison Committee." In doing so, it removes the primary responsibility for updating impact fees from City Council and hands it to an outside "independent" consultant, while also empowering the committee of private (unelected) individuals to "guide" the study's development. Yet the ordinance provides no intelligible standards governing how the consultant is to determine appropriate fee levels, beyond generic goals that fees remain proportionate to costs.[1] Nor does it subject the consultant's recommendations or the committee's input to approval or modification by the elected City Council. This again underscores that the ordinance is primarily concerned with *how* impact fees are implemented (an administrative function) rather than the legislative choice of whether and to what extent to have such fees.

Finally, the initiative as a whole intrudes upon and redirects ordinary administrative duties of City staff. Under current practice, City staff (e.g., the Planning Department and Finance Department) would periodically work with consultants to review and update impact fees, presenting any recommended changes to City Council for legislative action. This is a normal administrative workflow. The proposed ordinance seeks to overhaul that workflow: it mandates when staff must conduct reviews, dictates that an outside entity perform the analysis, compels staff to work with a new committee at every step, and effectively preempts Council's discretionary role in adjusting fees (since the fees "described in this chapter" are to be kept updated per the independent studies). In doing so, the measure deeply "encroach[es] on ... future administrative responsibilities of city staff." *Vagneur,* at ¶ 27.

This is precisely the kind of interference that Colorado courts have found to lie beyond the initiative power. Just as the Aspen initiatives in *Vagneur* improperly attempted to manage a complex project by ordinance (thus "fundamentally" intruding on the city's administrative processes), the impact fee initiative here attempts to directly manage the City's internal process of updating fees. The initiative does not simply set a policy goal ("impose more types of impact fees")—it goes further to micromanage how the City studies, calculates, and implements those fees on an ongoing basis. This level of granular control over executive functions is a hallmark of an administrative measure, not a legislative one.

III. The Initiative Petition Violates the Single-Subject Rule of Colo. Const. art. V, § 1(5.5) by Combining Multiple Independent Subjects into One Measure

Separately and independently, the petition should be rejected because the proposed ordinance contains more than one subject. Louisville's Home Rule Charter requires the City Clerk to "reject" a proposed ordinance if it "contains more than one (1) subject" or if its provisions are "not necessarily or properly connected." Louisville Home Rule Charter § 7-1(b).

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[1] It is also important to note that Colorado law forbids such unchecked delegation of legislative authority. *City & Cnty. of Denver v. Denver Firefighters Loc. No. 858, AFL-CIO*, 663 P.2d 1032, 1036–37 (Colo. 1983) ("elected officials responsible for performing [a] legislative function may not constitutionally delegate their ultimate decision-making authority to persons who are unaccountable to the electorate."). The ordinance would independently fail on these grounds if it were to be placed on the ballot and passed by the voters.

Likewise, Article V, § 1(5.5) of the Colorado Constitution provides: "No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title ... If a measure contains more than one subject ... no title shall be set and the measure shall not be submitted to the people." The single-subject rule aims to prevent "logrolling" (packaging disparate proposals to secure support from different factions) and to avoid voter surprise or fraud caused by concealing substantive effects within a complex initiative. *Matter of Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128*, 2022 CO 37, ¶ 15.

In other words, proponents may not combine "incongruous subjects in the same measure" to attract a wider coalition than either subject could achieve on its own, and voters must not find "surreptitious measures" tucked into an initiative unbeknownst to them. *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 441 (Colo. 2002), *disapproved of by Matter of Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 57.If an initiative has "at least two distinct and separate purposes which are not dependent upon or connected with each other," it violates the single-subject mandate and cannot proceed, *#30*, 959 P.2d at 825.

To be sure, the single-subject rule is construed liberally such that provisions necessarily or properly related to one overarching subject may be combined. But the relationship must be genuine: all provisions must be "necessary and proper" to each other or to the accomplishment of one objective, *In re Title, Ballot Title & Submission Clause for 2005-2006 #55*, 138 P.3d 273, 279 (Colo. 2006). Where an initiative's provisions are not interdependent and instead address discrete legislative purposes, the measure must be split—the proposal cannot be lumped into one question for a yes/no vote. *Matter of Title, Ballot Title, & Submission Clause, Summary for 1997-98 No. 30*, 959 P.2d 822, 826 (Colo. 1998).

The Colorado Supreme Court has not hesitated to strike down initiatives that "commingle" multiple subjects. For example, in *In re Title, Ballot Title & Submission Clause for 1997-1998 #30*, the Court refused to allow a single initiative that combined a local government tax cut with separate procedural changes affecting prior voter-approved revenues. *Id.* at 826. Cutting local taxes was one subject; altering revenue-spending rules was a second, independent subject—putting them together in one measure was held to be a single-subject violation. *Id.* Likewise, the Court has found that an initiative which both cuts local taxes and imposes new state spending limits or audit requirements contains multiple subjects: one cannot hitch a "mandatory restriction on state spending" or a sweeping auditing mandate to a tax-cut proposal without running afoul of the single-subject rule. *#172 & #173*, 987 P.2d at 246-47. Each idea must stand or fall on its own merits, rather than riding in tandem such that voters face an all-or-nothing choice on a grab-bag of provisions.

A. Multiple Independent Subjects in this Initiative

The proposed Louisville impact fee initiative plainly comprises two (or more) distinct subjects improperly rolled together. These can be summarized as: (1) a substantive expansion of the City's development impact fee regime (adding numerous new categories of fees on new development, such as for open space, recreation, emergency services, affordable housing, etc., which are not covered by the current law), *and* (2) the imposition of new detailed administrative requirements governing how impact fees are calculated and updated (mandating five-year independent studies and creating the Impact Fee Liaison Committee to oversee those studies). Each of these components has a different purpose, and neither is necessarily dependent on the other. Together, they do not serve one single unified purpose but rather two at once.

1. Expanding Impact Fee Categories.

One clear aim of the measure is to broaden the types of capital facilities for which the City must collect impact fees. Currently, Louisville's impact fees are limited to three categories (library, transportation, parks/trails). The initiative would add many new categories of fees: open space, recreation facilities, emergency services, municipal buildings, water, wastewater, storm sewer, flood control, and affordable housing. This represents a significant change—effectively a sizable increase in the financial obligations on new development and a redirection of how new development contributes to community infrastructure. A voter might support or oppose the inclusion of each new fee category on its own merits. In short, the first subject of the initiative is "increase the scope of development impact fees" to a much broader set of public facilities.

2. Mandating a Specific Update Process (Independent Studies & Committee)

Separately, the measure seeks to codify a particular process for regularly updating and justifying those fees that would lock in various administration procedures and *exclude* the City Council from participating in the setting of impact fees. This is a very different objective from the first topic of expanding impact fee categories. By requiring an independent consultant's study every five years and by forming a citizen committee to guide the outcome, the initiative's purpose here is to dictate the administration of how impact fees are reviewed and calculated. While this portion of the measure fails for the reasons stated above (i.e., it extensively intrudes on the City's administrative functions), it also creates an impermissible second subject within the measure.

A voter could logically favor expanding the fees to entirely new categories but disfavor the radical restructuring of *how* the City goes about setting such fees. These two components—one expanding the fee *substantively*, the other dictating the administration of the *process*—do not depend on one another. There is no *necessary* connection that requires these provisions to be passed in a single unified law.

Because these subjects are not "necessary and proper" to one another, combining them in one initiative constitutes classic logrolling. The initiative forces a single up-or-down vote on a package that appeals to different constituencies for different reasons. For example, proponents of growth management might strongly favor adding new impact fee categories (to make development pay for more things) but would be surprised to learn they had also voted to remove City Council from the process of setting the actual fees for the new categories.

By bundling the administrative provisions bypassing City Council with the fee category expansion, the measure's drafters can enlist a broader coalition than either change might draw on its own. This is precisely the "vote trading" mischief the single-subject rule is designed to prevent. Colorado law requires that different subjects must pass on their own merits—yet here, voters inclined to support one aspect must accept the other aspect to get it, or vice versa. This all-or-nothing presentation deprives voters of a clear, focused choice on each policy question.

Colorado Supreme Court precedents bolster this conclusion by analogy. In *In re Title, Ballot Title and Submission Clause for 1997-1998 #30*, the Court struck an initiative that combined a tax policy change with procedural rules about spending, calling it "a single subject violation by commingling a local tax cut with procedural changes" affecting other fiscal matters. The Louisville initiative does the same in reverse: it commingles a local fee increase (more categories of fees) with procedural changes (new study and committee requirements, exclusion of City Council) affecting how those fees are administered. Similarly, in *In re Proposed Initiatives 172 and 173* (1999), the Court found multiple subjects where the initiatives paired local tax cuts with a mandate that the state replace the lost revenue under certain spending limits. The tax cuts and the spending restrictions were deemed distinct subjects, improperly joined. Here, the expansion of fees parallels the tax change in those cases, and the imposition of an independent review/committee mechanism parallels the distinct spending or auditing rules – they are separate aims. Just as an "audit requirement" was not necessarily related to a tax cut in the 1999 case (and so was a second subject), the "impact fee liaison committee and study requirement" is not necessarily related to the inclusion of new fee categories, making it a second subject in the Louisville initiative. In fact, the lack of a necessary connection is even more evident here: one could remove the entire Section 3.18.100 (the five-year study and committee provisions) and still have a complete ordinance that imposes new impact fees, and conversely one could remove the fee-category expansions and still have a coherent (if administrative) ordinance mandating periodic reviews of existing fees. The two sets of provisions function independently.

Because the measure at issue contains multiple subjects, it violates Colo. Const. art. V, § 1(5.5). Therefore, even apart from the administrative nature discussed in Argument I, the petition must be rejected for the single-subject violation. It would be unlawful to present this multi-subject proposal to Louisville voters in its current combined form. The City Clerk, in ruling on this protest, should so hold.

IV. Conclusion and Request for Relief

For the foregoing reasons, Protestor respectfully urges that the initiative petition to amend Chapter 3.18 of the Louisville Municipal Code be declared insufficient and invalid. The proposed measure attempts to exercise powers beyond the scope of the initiative (administrative/executive powers) and bundles together multiple discrete subjects in contravention of constitutional requirements. Any one of these defects is a sufficient ground to invalidate the petition; here, both are present. The City Clerk should protect the integrity of the local lawmaking process by refusing to certify this improper initiative to the ballot.

WHEREFORE, Protestors request that the City Clerk enter a determination that the initiative petition is not sufficient and invalid, and that no election shall be held on the proposed ordinance. Protestors further request such other or further relief as is just and proper to effectuate the purposes of Louisville's Home Rule Charter, C.R.S. § 31-11-110 and Article V, § 1 of the Colorado Constitution.

Respectfully submitted this 8th day of August, 2025.

Shea Law, LLC

/s/ Michael Shea
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Attorney for Protestors

I swear under oath that this protest is true and accurate to the best of my knowledge.

Tim Bierman
905 Lincoln Avenue
Louisville, Colorado 80027

STATE OF COLORADO
Boulder COUNTY

Subscribed and Sworn to me on this [SEAL]

7th day of August, 2025

CATHERINE S FELTMAN
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20164047704
MY COMMISSION EXPIRES DEC 19, 2028

Notary public: Catherine S Feltman

My commission expires: December 19, 2028

I swear under oath that this protest is true and accurate to the best of my knowledge.

Don P. Brown, Jr.
505 Grant St.
Louisville, Colorado 80027

STATE OF NEW HAMPSHIRE
GRAFTON COUNTY

Subscribed and Sworn to me on this [SEAL]

7TH day of AUGUST, 2025

Notary public:

My commission expires: 2/26/2030

George D. Sutcliffe, Jr.
Notary Public, State of New Hampshire
My Commission Expires Feb. 26, 2030

GEORGE D. SUTCLIFFE JR. NOTARY PUBLIC NEW HAMPSHIRE

I swear under oath that this protest is true and accurate to the best of my knowledge.

Karen Brown
505 Grant St.
Louisville, Colorado 80027

STATE OF NEW HAMPSHIRE
GRAFTON COUNTY

Subscribed and Sworn to me on this [SEAL]

7TH day of AUGUST, 2025

Notary public:

My commission expires: 2/26/2030

George D. Sutcliffe, Jr.
Notary Public, State of New Hampshire
My Commission Expires Feb. 26, 2030

GEORGE D. SUTCLIFFE JR. NOTARY PUBLIC NEW HAMPSHIRE