BEFORE THE CITY CLERK OF THE CITY OF LOUISVILLE, COLORADO

In re: Initiative Petition to Amend Chapter 17.16, Louisville Municipal Code (Residential Rezoning)

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 17.16 of the Louisville Municipal Code regarding residential rezoning. The 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.

Background

On July 2, 2025, an initiative petition seeking to add Section 17.16.360 to the Louisville Municipal Code, entitled "Prohibition on Residential Rezoning" was filed. The initiative described in the petition targets three large development areas in the City—Centennial Valley, Redtail Ridge, and the Avista Adventist Hospital campus—and attempts to prohibit any rezoning or land use change that would allow residential development on those properties. The petition recites that this ban is imposed "in order to support the fiscal health of the City and its ability to provide adequate service levels." The measure, however, also creates a (purported) *exception* to the ban: if a proposed development in the affected areas dedicates at least 30% of its new housing units as deed-restricted affordable housing (for households at or below 80% of area median income), then the rezoning may proceed. The petition mandates that this 30% affordable housing requirement be satisfied only through on-site units—expressly disallowing any alternate means of compliance such as fee-in-lieu payments or off-site units, by stating that "the on-site option shall be the only option" to meet the affordability quota.

I. The Petition Violates the Single-Subject Rule in the City Charter and Colorado Constitution

The initiative described in the petition should be rejected because the proposed ordinance contains more than one subject. Section 7-1 of Louisville's Home Rule Charter requires the City Clerk to reject a proposed initiative ordinance if it "contains more than one (1) subject" or if its provisions are "not necessarily or properly connected" (i.e. are disconnected or incongruous). In this respect the Charter echoes the single-subject rule in the Colorado Constitution, which 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." Colo. Const. art. V, § 1(5.5). The single-subject rule exists to prevent "logrolling"—the practice of packaging together disparate proposals to secure support from different factions—and to avoid voter surprise or fraud caused by concealing substantive effects in a complex initiative. *See In re Proposed Initiatives 2021–2022 #67, #115, & #128*, 2022 CO 37, ¶ 15 (Colo. 2022) (discussing the purposes of the single-subject requirement). If an initiative's provisions lack a necessary or proper connection to each other, or if the measure seeks to accomplish two or more separate purposes, it violates this rule and cannot be submitted to voters.

Here, the initiative manifestly embraces two unrelated subjects: (1) a moratorium on rezonings that would allow residential development in three defined areas of the City, and (2) an affordable-housing set-aside requirement dictating that any such rezoning (if it were to occur) include at least 30% on-site deed-restricted units for low- and moderate-income households.

Either proposal could stand alone as an independent policy question, and each appeals to different voter interests. One deals with growth and land-use restriction, while the other addresses the provision of affordable housing. Voters might favor one of these policies and dislike the other. For example, a voter who is concerned with limiting growth might support a freeze on new residential development but have no interest in imposing affordable housing requirements (or might even oppose such requirements for potentially encouraging development). Conversely, a voter who strongly supports affordable housing initiatives might welcome a 30% inclusionary zoning requirement in new developments, but object to an outright ban on residential rezonings that could stifle all new housing opportunities. By forcing voters to accept or reject both provisions as a package, the initiative "combines subjects with no necessary connection for the purpose of garnering support from various factions"—precisely the logrolling tactic the single-subject rule is designed to prohibit. The measure also raises the risk of voter surprise: a voter focusing on the ban might not appreciate the significant affordable-housing mandate tucked into the measure (or vice versa). *See In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3*, 2012 CO 25, ¶ 11("the single subject rule helps avoid voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative.") (internal citations omitted).

The initiative flouts these single-subject principles. It attempts to yoke together a development moratorium with an affordable-housing mandate, two policies that are not necessarily or properly connected. Indeed, the provisions are not only disconnected but mutually undermine one another: the measure purports to prohibit any rezoning that allows residential development, yet in the same breath concedes that a rezoning may proceed if a heavy affordable-housing condition is met. In effect, the initiative is internally split between a no-growth mandate and a conditional-growth allowance, each of which addresses a different policy goal (municipal service capacity in the former, housing affordability in the latter). Because the initiative forces voters into an all-or-nothing choice on two incongruous subjects, it violates the Charter's single-subject rule and must be rejected.

II. The Petition Conflicts with Colorado Statutes on Affordable Housing, Rendering it Misleading and Invalid

Further underscoring the initiative's single-subject violation, the second subject embedded in this measure—the 30% affordable housing mandate—is not only separate but is also illegal under state law. Municipalities in Colorado may impose affordable housing mandates on new development *only if* they comply with the requirements of C.R.S. § 29-20-104(1)(e.5)–(e.7). Those provisions carve out a narrow "safe harbor" from the general ban on rent control (C.R.S. § 38-12-301) for local inclusionary housing regulations. To fall within this safe harbor, a municipal affordable housing ordinance imposing affordable housing requirements must, at a minimum, (i) offer developers a menu of options for compliance (i.e. it must "provide[] a choice of options to the property owner or land developer" and create "alternatives to the construction of new affordable housing units on the building site"), and (ii) be accompanied by concrete measures to increase the overall housing supply or incentivize development of affordable units.

In other words, a city can require a percentage of affordable units in new housing <u>only if</u> developers have flexibility in how to meet that requirement (such as paying a fee in lieu, building affordable units off-site, dedicating land, etc.), and the city simultaneously takes pro-housing actions like upzoning for greater density, reducing regulatory barriers, or offering financial incentives for affordable housing. This was the Colorado General Assembly's carefully balanced response to the Supreme Court's decision in *Town of Telluride v. Lot Thirty-Four Venture, LLC*, 3 P.3d 30 (Colo. 2000), which had invalidated a local affordable-housing ordinance as a form of rent control contrary to state law. The General Assembly, via C.R.S. § 29-20-104, now permits inclusionary zoning ordinances, but only if they adhere to the prescribed options-and-incentives framework to avoid choking off housing development (as this initiative would do). A local measure that fails to meet these statutory conditions remains preempted by state law. *See Telluride*, 3 P.3d at 37 (a local affordable housing mandate that functions as rent control is invalid unless expressly authorized by statute).

The initiative runs afoul of these state law requirements at every turn. It imposes a rigid 30% affordable-unit mandate on any development allowed under its exception, without providing any alternative means of compliance or relief for the developer. In fact, the initiative explicitly says that "[t]he on-site option shall be the only option" to satisfy the 30% requirement. There is no allowance for paying a fee instead of building units, no option to build the affordable units elsewhere, and no density bonus or other incentive to offset the cost. This inflexibility directly violates C.R.S. § 29-20-104(1)(e.5)'s mandate that local governments must offer a “choice of options” and an alternative to on-site construction if they choose to require affordable units.

Indeed, the initiative undertakes no action that could be seen as increasing overall housing supply or incentivizing affordable development; to the contrary, its primary thrust is to reduce development by banning rezonings. Nothing in the petition would demonstrate that it has “taken one or more... actions to increase the overall number and density of housing units” or to create incentives for affordable housing, as required by C.R.S. § 29-20-104(1)(e.7). The initiative ’s scheme is the antithesis of what the statute envisions: instead of encouraging more housing, it halts housing growth; instead of coupling mandates with incentives, it couples a mandate with a prohibition. Such a law would not fall under the statutory safe harbor, and thus the general ban on rent control (C.R.S. § 38-12-301) would apply, preempting the local ordinance. In short, the initiative’s affordable housing requirement is clearly illegal under state law and cannot be effectuated.

While Protestor acknowledges that typically a preemption challenge to a municipal ordinance would be resolved in court after the ordinance’s enactment, here the conflict with state law further illustrates the single-subject violation in the initiative. A subject that is barred by state law can never be “necessary” to, or logically interwoven with, a companion subject; instead, it stands as an independent (and impermissible) objective. The Petition therefore packages together one policy (a development moratorium) with another that is patently unlawful, confirming that the measure impermissibly logrolls two unrelated matters.

The unavoidable illegality of the second subject also breeds voter deception. Because state law precludes the City from enforcing the 30 percent mandate, electors who support the Petition in the belief that it will deliver a large tranche of deed-restricted homes will be disappointed: that promise is illusory. Put another way, voters may be misled into voting for the initiative on the basis of an illegal requirement that cannot become law. This outcome is barred by the single-subject rule and its prohibition on packaging together various subjects to gain electoral approval.

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

Michael Shea, CO Bar # 33119
Shea Law, LLC
387 N. Corona St. #902
DENVER, CO 80218
Phone Number: 303-887-4505
E-mail: jmshealaw@gmail.com

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

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
GRAFON 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