

**AGENDA**  
**February 19, 2019**

Armory Multi-Purpose Room  
230 N. Bluff Street  
Lake City, Colorado

**I. SPECIAL MEETING**  
4:45-5:00 p.m.

**II. CALL TO ORDER:**

**III. ROLL CALL:**

**IV. SPECIAL MEETING**

- a. Discussion and possible action to consider choosing a hearing officer for the protest public hearing.

**V. CLOSE SPECIAL MEETING**

**VI. HEARING**  
5:00 – 7:00 p.m.

- a. Hearing on protests of citizen’s petition filed on January 3, 2019 concerning an OHV ordinance of the Town.

**VII. ADJOURNMENT:**



PETITION SECTION NO: 1 of 2

NOW THEREFORE, be it ordained by the Board of Trustees of the Town of Lake City, Colorado, as follows:

Section 1:

Section 20-76 of Article IV of the Municipal Code of the Town of Lake City is hereby repealed.

Section 2:

A new Section 20-78 to Article IV of the Municipal Code of the Town of Lake City is hereby enacted with the following provisions:

- a. Except as provided for in section 20-77 of Article IV of the Municipal Code of the Town of Lake City, no off-highway vehicle, as the same is defined by CRS 33-14.5-101 et seq., shall be used or operated upon or within any street, highway, alleyway, sidewalk, pathway or other public thoroughfare within the territorial limits of the Town of Lake City.
- b. The adoption of any new ordinance allowing the use or operation of any off-highway vehicle on or within any street, highway, alleyway, sidewalk, pathway or other public thoroughfare within the territorial limits of the Town of Lake City shall be decided by the registered voters of the Town of Lake City at a regular or special election.

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Summary: A Petition to Initiate regulating Off Highway Vehicles (OHV) within the Town of Lake City, Colorado.

(to be filled out by the town clerk per CRS 31-11-106(3)(b))

The names of two (2) persons who shall represent the proponents of the petition in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed, are:

NAME: ADDRESS:  
John Coy P.O. Box 171, Lake City, Colorado 81235

Larry Iiams P.O. Box 761, Lake City, Colorado 81235

1	Signature	Printed Name	Residence Address (Street & Number) City/Town	County
✓		Larry Iiams	805 Hotchkiss St. Lake City	Hinsdale
2	Signature	Printed Name	Residence Address (Street & Number) City/Town	Date of Signing County
✓		CRIG DUNCAN PALMER	701 HOTCHKISS ST LAKE CITY	11/20/18 HINSDALE
3	Signature	Printed Name	Residence Address (Street & Number) City/Town	Date of Signing County
✓		PATRICE ANNETTE PALMER	701 HOTCHKISS ST. LAKE CITY	11/20/18 HINSDALE
4	Signature	Printed Name	Residence Address (Street & Number) City/Town	Date of Signing County
✓		Lucas McCall Martin	815 Hotchkiss Street Lake City	Hinsdale 11/20/18
5	Signature	Printed Name	Residence Address (Street & Number) City/Town	Date of Signing County
✓		JACQUELYN TERHUNE	920 HOTCHKISS ST. #A LAKE CITY	HINSDALE 11/21/18
6	Signature	Printed Name	Residence Address (Street & Number) City/Town	Date of Signing County
✓		Eric E. Larson	855 Pines LAKE CITY	Hinsdale 11/21/18
7	Signature	Printed Name	Residence Address (Street & Number) City/Town	Date of Signing County
✓		KENNEDY CRAIG ERRETT	521 PINE STR, LAKE CITY	HINSDALE 11/21/18

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8	Signature	Residence Address (Street & Number)	County
✓	<i>Pamela R Rowe</i> Printed Name Pamela Rae Rowe	901 Pine Street Lake City, CO	Hinsdale 11-21-18
✓	<i>Shelbi McWhirter</i> Printed Name Shelbi M McWhirter	610 Hotchkiss St Lake City	Hinsdale 11-21-18
✓	<i>John S Nelson</i> Printed Name John Sumner Nelson	606 Hotchkiss St LAKE CITY	HINSDALE 11-21-2018
✓	<i>Donald F Farinek</i> Printed Name DONALD F FARINEK	509 WATER LAKE CITY	HINSDALE 11/21/2018
✓	<i>Albert Warner Dewey</i> Printed Name Albert Warner Dewey	625 Pine Street B. Lake City	Hinsdale 11/25/2018
✓	<i>Helen M Dewey</i> Printed Name Helen M Dewey	625 Pine Street Lake City	Hinsdale 11/25/2018
✓	<i>Cindy Nelson</i> Printed Name Cindy Jo Nelson	960 Forget Me Not Ln Lake City	Hinsdale 11-26-18

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 Larry Iiams  
 P.O. Box 761, Lake City, Colorado 81235

Signature	Printed Name	Residence Address (Street & Number)	City/Town	County	Date of Signing
<i>[Signature]</i>	JOE THOMAS MARSHALL	518 WHITE ST	LAKE CITY	Hinsdale	11-26-2018
<i>[Signature]</i>	Kenneth R. Matzick	521 Water St	Lake City	Hinsdale	11-26-2018
<i>[Signature]</i>	Kenneth R. Matzick	521 Water St.	Lake City	Hinsdale	11-26-2018
<i>[Signature]</i>	LOIS ANN BABBS-MATZICK	LAKE CITY	LAKE CITY	Hinsdale	11/26/2018
<i>[Signature]</i>	SUSAN FARM-HEUMAN	337 Sunshine Drive	Lake City, CO	Hinsdale	11-26-2018
<i>[Signature]</i>	Glen Thomas Heuman	337 Sunshine Drive	Lake City, CO	Hinsdale	11/26/2018
<i>[Signature]</i>	MICHELLE LYNN MARTIN	815 HOTCHKISS ST	LAKE CITY, CO	Hinsdale	11/26/2018
<i>[Signature]</i>	CHARLIE E CURTIS	717 SILVER	LAKE CITY	Hinsdale	11-27-18

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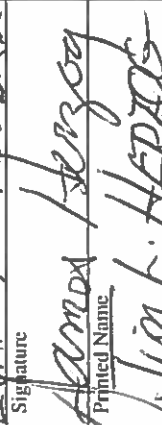


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Larry Iiams P.O. Box 761, Lake City, Colorado 81235

29	Signature 	Residence Address (Street & Number) 316 D SWIVER ST. City/Town LAKE CITY, CO	County HANS DALE
30	Signature 	Residence Address (Street & Number) 630 Pine St. City/Town Lake City	County HANS DALE
31	Signature 	Residence Address (Street & Number) 630 Pine St City/Town Lake City	County Hinsdale
32	Signature 	Residence Address (Street & Number) City/Town	County Date of Signing 12/31/2018
33	Signature Printed Name	Residence Address (Street & Number) City/Town	County Date of Signing
34	Signature Printed Name	Residence Address (Street & Number) City/Town	County Date of Signing
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38	Signature	Residence Address (Street & Number)	County
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40	Signature	Residence Address (Street & Number)	County
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45	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
46	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
47	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
48	Signature	Residence Address (Street & Number)	County
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49	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing

**AFFIDAVIT OF CIRCULATOR**

I do solemnly affirm under penalty of perjury that:

- I have read and understand the laws governing the circulation of petitions;
- I was at least 18 years of age at the time this section of the petition was circulated and signed by the listed electors;
- I circulated this section of the petition;
- Each signature on this petition was affixed in my presence;
- Each signature on this petition is the signature of the person whose name it purports to be;
- To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector; and
- I have not paid or will not in the future pay, and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

**Circulator Name (please print)**

Iiams Last Name Larry First Name

**Permanent Residence Address (or location if homeless)**

805 Hotchkess St Lake City Hinsdale CO 81235  
Street Name and Number City/Town County State Zip Code

**Sign and Date in the Presence of a Notary**

[Signature] 12/31/18  
Signature of circulator Date of Signing

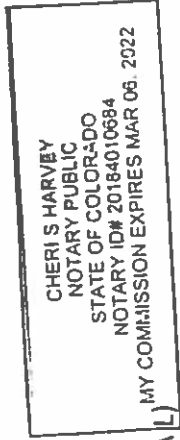
**A NOTARY PUBLIC MUST COMPLETE THE FOLLOWING SECTION**

STATE OF COLORADO

COUNTY OF Hinsdale

Subscribed and affirmed before me this 31<sup>st</sup> day of December, 2018, by

Larry Iiams [Circulator named above].



[Signature]

Signature of Notary

(S E A L)

12

PETITION SECTION NO: 2 of 2

Received

JAN 03 2019

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NAME: John Coy ADDRESS: P.O. Box 171, Lake City, Colorado 81235 Larry Iiams P.O. Box 761, Lake City, Colorado 81235

PETITION TO INITIATE

To: Board of Trustees for the Town of Lake City, Colorado

I sign this petition in my own signature for the adoption of an ordinance to repeal Section 20-76 of Article IV of the Municipal Code of the Town of Lake City regulating the operation of off-highway vehicles within the Town of Lake City and adding a new Section 20-78 to Article IV of the Municipal Code of the Town of Lake City prohibiting the use and operation of off-highway vehicles within the Town of Lake City.

If such Ordinance is not adopted by the Board of Trustees, I demand the Board of Trustees submit the Ordinance to a vote of the registered electors of the Town of Lake City at a regular or special election so that the Ordinance will take effect if a majority of the registered electors voting on the measure at the election vote in favor of the Ordinance.

The Ordinance that is the subject of this petition follows:

AN ORDINANCE OF THE TOWN OF LAKE CITY, COLORADO, REPEALING SECTION 20-76 OF ARTICLE IV OF THE MUNICIPAL CODE OF THE TOWN OF LAKE CITY REGULATING THE OPERATION OF OFF-HIGHWAY VEHICLES WITHIN THE TOWN OF LAKE CITY AND ENACTING A NEW SECTION 20-78 TO ARTICLE IV OF THE MUNICIPAL CODE OF THE TOWN OF LAKE CITY PROHIBITING THE USE AND OPERATION OF OFF-HIGHWAY VEHICLES WITHIN THE TOWN OF LAKE CITY.

PETITION SECTION NO: 2 of 2

NOW THEREFORE, be it ordained by the Board of Trustees of the Town of Lake City, Colorado, as follows:

Section 1:

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Larry Iiams P.O. Box 761, Lake City, Colorado 81235

1	Signature	Residence Address (Street & Number)	County
	<i>P.O. No</i>	<i>825 GUNNISON AVE.</i>	<i>HINSDALE</i>
	Printed Name	City/Town	Date of Signing
✓	<i>PETER DANIEL NEBITT</i>	<i>LAKE CITY</i>	<i>11-21-2018</i>
	Signature	Residence Address (Street & Number)	County
✓	<i>Carol Robinson</i>	<i>514 Sunshine drive</i>	<i>Hinsdale</i>
	Printed Name	City/Town	Date of Signing
✓	<i>Carol Marjorie Robinson</i>	<i>Lake City</i>	<i>11-21-18</i>
	Signature	Residence Address (Street & Number)	County
✓	<i>Schuyler Denham</i>	<i>514 Sunshine Drive</i>	<i>Hinsdale</i>
	Printed Name	City/Town	Date of Signing
✓	<i>Schuyler Richard Denham</i>	<i>Lake City</i>	<i>11-21-18</i>
	Signature	Residence Address (Street & Number)	County
✓	<i>Mary Jaye Bulter</i>	<i>710 No LAKE ST</i>	<i>Hinsdale</i>
	Printed Name	City/Town	Date of Signing
✓	<i>MARY JAYE PIELSER</i>	<i>LAKE CITY</i>	<i>11/21/2018</i>
	Signature	Residence Address (Street & Number)	County
✓	<i>Tanya M Bolger</i>	<i>801 LAKE ST</i>	<i>Hinsdale</i>
	Printed Name	City/Town	Date of Signing
✓	<i>TANYA M BOLGER</i>	<i>Lake City</i>	<i>11/21/2018</i>
	Signature	Residence Address (Street & Number)	County
✓	<i>Henry E Weeds</i>	<i>111 Silver St.</i>	<i>Hinsdale</i>
	Printed Name	City/Town	Date of Signing
✓	<i>HENRY E. WOODS</i>	<i>Lake City Colo</i>	<i>11-21-2018</i>
	Signature	Residence Address (Street & Number)	County
✓	<i>Cinda Gay Reben</i>	<i>111 Silver St</i>	<i>Hinsdale</i>
	Printed Name	City/Town	Date of Signing
✓	<i>Cinda Gay Reben</i>	<i>Lake City, CO</i>	<i>11-21-2018</i>

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✓		409 Bluff St. Lake City, CO 81235	Hinsdale
9		1313 mergo Lake City	Hinsdale
10		217 GLENNA COURT LAKE CITY, CO 81235	Hinsdale
11		212 SOLENA CT. LAKE CITY	Hinsdale
12		831 Bluff St. LAKE CITY	Hinsdale
13		831 Bluff St. LAKE CITY	Hinsdale
14		831 Bluff St. LAKE CITY	Hinsdale



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18	Signature	Residence Address (Street & Number)	County
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19	Signature	Residence Address (Street & Number)	County
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For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign such a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE IN THE TOWN OF LAKE CITY

Do not sign this petition unless you have read or have had read to you the proposed initiative in its entirety and understand its meaning.

Summary: A Petition to Initiate regulating Off Highway Vehicles (OHV) within the Town of Lake City, Colorado.

(to be filled out by the town clerk per CRS 31-1.1-106(3)(b))

The names of two (2) persons who shall represent the proponents of the petition in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed, are:

NAME: ADDRESS:  
John Coy P.O. Box 171, Lake City, Colorado 81235

Larry Iiams P.O. Box 761, Lake City, Colorado 81235

29	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
30	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
31	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
32	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
33	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
34	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
35	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing

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Do not sign this petition unless you have read or have had read to you the proposed initiative in its entirety and understand its meaning.

Summary: A Petition to Initiate regulating Off Highway Vehicles (OHV) within the Town of Lake City, Colorado.

(to be filled out by the town clerk per CRS 31-11-106(3)(b))

The names of two (2) persons who shall represent the proponents of the petition in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed, are:

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Larry Iiams P.O. Box 761, Lake City, Colorado 81235

36	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
37	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
38	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
39	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
40	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
41	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
42	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing

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**Summary: A Petition to Initiate regulating Off Highway Vehicles (OHV) within the Town of Lake City, Colorado.**

(to be filled out by the town clerk per CRS 31-11-106(3)(b))

The names of two (2) persons who shall represent the proponents of the petition in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed, are:

NAME: ADDRESS:  
 John Coy P.O. Box 171, Lake City, Colorado 81235

Larry Iiams P.O. Box 761, Lake City, Colorado 81235

43	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
44	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
45	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
46	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
47	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
48	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing
49	Signature	Residence Address (Street & Number)	County
	Printed Name	City/Town	Date of Signing

**AFFIDAVIT OF CIRCULATOR**

I do solemnly affirm under penalty of perjury that:

- I have read and understand the laws governing the circulation of petitions;
- I was at least 18 years of age at the time this section of the petition was circulated and signed by the listed electors;
- I circulated this section of the petition;
- Each signature on this petition was affixed in my presence;
- Each signature on this petition is the signature of the person whose name it purports to be;
- To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector; and
- I have not paid or will not in the future pay, and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

Circulator Name (please print)

NESBITT PETER

Last Name

First Name

Permanent Residence Address (or location if homeless)

825 GUNNISON AVE, LAKE CITY, CO 81235

Street Name and Number

City/Town

State

Zip Code

Sign and Date in the Presence of a Notary

[Signature]

DEC 21, 2018

Signature of Circulator

Date of Signing

**A NOTARY PUBLIC MUST COMPLETE THE FOLLOWING SECTION**

STATE OF COLORADO

COUNTY OF Gunnison

Subscribed and affirmed before me this 21 day of December, 20 18, by

Peter Nesbitt

[Circulator named above].

[Signature]

Signature of Notary



( S E A L )

February 6, 2019

Ms. Jamie Turrentine  
Town of Lake City  
PO Box 544  
Lake City, CO 81235


Ms. Turrentine,

I'm concerned about the petition that has been submitted to ban all UTV's in town.

I believe the second paragraph is unconstitutional. You cannot bind future trustees. Trustees have the right to pass an ordinance anytime they want.

I'm also concerned about the language. I cannot locate section 20-76 of Article IV in the municipal code. Where is the question to the voters to vote yes or no?

Thank you,



Jesse Kendall  
Lake City Resident

Received

FEB -6 2019

Town of Lake City

Received

STATE OF COLORADO )  
 )ss.  
COUNTY OF HINSDALE )  
Town of Lake City

FEB - 6 2019

The undersigned, being duly sworn and under oath, says that the facts set forth in this protest are true and correct to the best of the signer's knowledge, information and belief.

  
Signature

Jesse Kendall  
Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME in the County of Hinsdale,  
State of Colorado, this 6 day of February, 2019, by Jesse Kendall.

Witness my hand and official seal.

  
Notary Public

JAMIE L. TURRENTINE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20184018730  
MY COMMISSION EXPIRES MAY 10, 2022

February 5<sup>th</sup>, 2019

Received

FEB -6 2019

Ms. Jamie Turrentine  
Town of Lake City, CO  
PO Box 544  
Lake City, CO 81235

Town of Lake City

Ms. Turrentine:

I have concerns regarding the "Petition to initiate regulating Off Highway Vehicles (OHV) within the Town of Lake City, CO".

In the text of the Petition it states "...prohibiting the use and operation of off-highway vehicles within the Town of Lake City." This is the stated goal of the petition, intending to require the town government to move forward with a ballot measure, not in the regularly scheduled sequence of balloting.

However, based on a ruling by 7<sup>th</sup> Judicial Chief District Judge Steven Patrick in 2002, regarding an appeal filed by then Deputy District Attorney Jeffrey Nims, which references a case heard by then County Judge Larry Vickers. To wit, four Arizona resident ATV/OHV riders were cited by then Hinsdale County Sheriff William Denison for illegally operating said machines on streets within the Town of Lake City. Those machines were licensed and registered as motor vehicles within the State of Arizona. The argument put forth by the attorney representing the Arizona residents was that under the interstate reciprocity agreement, said machines must be recognized as motor vehicle in the State of Colorado. Judge Vickers concurred and found said parties not guilty. DDA Nims filed an appeal into Judge Patrick's Court. On review, Judge Patrick concurred with Judge Vickers ruling, by which his opinion then impacted all six counties within the 7<sup>th</sup> Judicial District.

DDA Nims filed an appeal to the Colorado State Court of Appeals but did so two days past the ten-day deadline. Thus the matter stayed within the 7<sup>th</sup> Judicial District.

Then Town Manager of Lake City, Ms. Michelle Pierce, in 2008, at the behest of the then sitting Board of Town Trustees, asked the then Town attorney to request



a review by Judge Patrick. Judge Patrick responded by Court letterhead that the "ruling was the ruling" and that unless new information came to light, all states meeting a "mirror image" of the Arizona case, would fall under his opinion. Thus, no change occurred.

In 2018, a somewhat similar case arose within the confines of the municipality of the Town of Ouray, CO. A town ordinance prohibited OHV's on town streets. A Louisiana resident, who has financial ties in the State of Montana, was cited for similar circumstances such as the 2002 case in Lake City. The OHV being operated was licensed and titled in the State of Montana as a motorcycle, such as they are in Arizona. The operator pled not guilty. The case was then ultimately dismissed on advisement by the Town's attorney, feeling the ordinance as it was written was not enforceable. At some point however, the case appeared before District Judge Yoder. Judge Yoder ruled in favor of the Town of Ouray but no penalty was assessed against the operator of the OHV who had been cited. Judge Yoder's ruling flies in the face of her senior, Chief District Judge Patrick. Her ruling then only impacts the Town of Ouray.

Judge Patrick's ruling would then be believed to remain sacrosanct until a new case might come to light and run through an appeal process taking it to the State Appellate Court. That then being a higher court than Judge Patrick's, whatever ruling was handed down would then take precedent for the entire State of Colorado. It would either change the status quo in this District, or, keep it as it is now.

In the end, the petition seeks to ban All OHV's, yet Judge Patrick's ruling will continue to allow machines from Arizona, Utah, Wyoming, Idaho, Montana, South Dakota and Ohio. I would beg in my protest that the wording in the petition is such that it does not take that into consideration and would need to be re-submitted with those exceptions.

Your consideration of this protest is appreciated.  
Respectfully submitted,



Ronald B. Bruce, a registered voter in the Town of Lake City

Received

FEB -6 2019

Town of Lake City

STATE OF COLORADO )  
                                  )ss.  
COUNTY OF HINSDALE )

The undersigned, being duly sworn and under oath, says that the facts set forth in this protest are true and correct to the best of the signer's knowledge, information and belief.

R. B. Brock  
Signature  
RONALD B. BROCK  
Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME in the County of Hinsdale,  
State of Colorado, this 6<sup>th</sup> day of February, 2019, by  
\_\_\_\_\_.

Witness my hand and official seal.

Jamie L. Turrentine  
Notary Public

JAMIE L. TURRENTINE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20184018730  
MY COMMISSION EXPIRES MAY 10, 2022

Received  
FEB - 6 2019  
Town of Lake City

LAW OFFICES OF  
**BROWN & CAMP, LLC**  
550 PALMER ST., SUITE 201  
P.O. BOX 43  
**DELTA, COLORADO 81416-0043**

James D. Brown  
Terry L. Camp, *Also Admitted in Texas*  
Curtis R. Smeiser

*A. Allen Brown (1904-1983)*  
Telephone 970-874-4451  
Facsimile 970-874-7433

February 15, 2019

Jamie Turrentine, Town Clerk  
Town of Lake City  
PO BOX 544  
Lake City, CO 81235

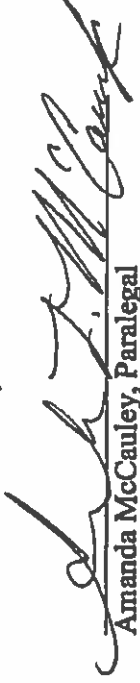
RE: Petition for Initiative Measure - Town of Lake City - Memorandum of Law Pertaining to  
Hearing on Protests to Sufficiency of Petition

Dear Mrs. Turrentine:

Enclosed is our original signed Memorandum of Law Pertaining to Hearing on Protests to  
Sufficiency of Petition.

Very truly yours,

BROWN & CAMP, LLC



Amanda McCauley, Paralegal

cc: Carol Vincer

Enclosed:

- Original Memorandum of Law Pertaining to Hearing on Protests to Sufficiency of  
Petition

BEFORE THE TOWN CLERK  
OF THE TOWN OF LAKE CITY, COLORADO

IN THE MATTER OF A PETITION TO INITIATE REGULATING OFF HIGHWAY  
VEHICLES (OHV) WITHIN THE TOWN OF LAKE CITY, COLORADO FILED BY:

JOHN COY and LARRY IIAMS

REPRESENTATIVE PROPONENTS.

Attorneys for Proponents John Coy and Larry Iiams:

James D. Brown, Reg No. 4759

Terry L. Camp, Reg. No. 34487

Brown & Camp, LLC

P.O. Box 43

Delta, CO 81416

Telephone: 970-874-4451

**MEMORANDUM OF LAW PERTAINING TO HEARING ON  
PROTESTS TO SUFFICIENCY OF PETITION**

The Proponents of the above-captioned petition for an ordinance initiated by the people of the Town of Lake City, by their undersigned attorneys, submit to the Town Clerk, as the designated hearing officer, the following memorandum of law pertaining to the hearing to be conducted on Tuesday, February 19, 2019 on the protests to the sufficiency of the petition.

**INTRODUCTION**

The Proponents have gathered 43 valid signatures on several sections or counterparts of a petition to initiate the adoption of an ordinance regulating off highway vehicles (OHVs) within the Town of Lake City. The Petition was filed with the Town Clerk on January 3, 2019. On February

1, 2019, the Town Clerk issued her Statement of Sufficiency pursuant to C.R.S. 31-11-109(2) finding all 43 signatures on the petition to be valid with only 21 valid signatures required. Two letters purporting to be protests to that determination of sufficiency have been filed with the Town Clerk and she has scheduled the matter for hearing on Tuesday, February 19, 2019, at 5:00 p.m. However, the protests do not raise any question as to the sufficiency of the signatures on the Petition, do not question the sufficiency of the affidavits of circulators of the various counterparts of the Petition, and do not question the fact that more than the requisite number of signatures have been obtained for the Petition. Instead, the protests improperly attempt to attack the merits and substance of the initiated measure which are matters outside the scope of any hearing to be conducted upon protests to the Petition. As such, the protests should be dismissed and the initiated measure should be certified to the Board of Trustees for action to call a special election upon the initiated measure.

**1. ISSUE TO BE DECIDED: HAS THE TOWN CLERK PROPERLY FOUND THE PETITION TO BE SUFFICIENT AS REQUIRED BY C.R.S. 31-11-110?**

This matter is a quasi-judicial proceeding required by Colorado law governing the exercise of the right of the people to initiate municipal legislation. The scheduled hearing is required only because two “protests” to the petition for initiative measure were filed by Jesse Kendall and Ronald B. Bruce (“the Protesters”). Accordingly, there are two opposing parties in the matter: the protestors and our clients, the representatives of the proponents of the measure. And, to be clear, and as more fully demonstrated below, the scheduled hearing is not a “public hearing” open to general citizen participation. It is a quasi-judicial proceeding between the parties before the Town

Clerk as the impartial and neutral decisionmaker.

C.R.S. 31-11-110 requires the Town Clerk, who is an appointed ministerial official of the Town of Lake City, to determine whether a petition for an initiated measure is “sufficient or not sufficient” to meet the “requirements of this article [article 11 of Title 31, C.R.S.]” for a petition to initiate an ordinance of the Town. Those requirements are set forth in C.R.S. 31-11-106 through

109 (cited by section number below):

- a. Section 106 sets for the requirements for the form of the petition and requires that a proposed petition be submitted to the Town Clerk for approval prior to its circulations. Requirements of this section include: (1) names and addresses of two representative proponents of the initiated measure; (2) specific language warning prospective signers of the consequences of unlawful signing of the petition; (3) a summary of the proposed initiated measure or ordinance; (4) the full text of the measure or ordinance; and (5) the proper formatting of the signature pages.
- b. Section 107 prohibits circulation of any section of the petition by any person other than by a single designated circulator over the age of 18 years at the time of circulation.
- c. Section 108 requires the personal signature of each signer who must be a registered elector of the Town. The signer must both sign and print his or her name and print his or her full residence address. This section also makes provision for another person to assist an eligible disabled signer.
- d. Section 109 requires the Town Clerk to inspect a filed petition and attached affidavits “and may do so by examining the information on signature lines for patent defects, by comparing the information on signature lines against a list of registered electors . . . .” Upon completion of her inspection, the Town Clerk is required to issue a statement “as to whether a sufficient number of valid signatures have been submitted.” The “statement of sufficiency” shall be issued no later than thirty calendar days after filing of the petition.

Any protest to a petition for an initiated measure must specifically set forth the grounds for the protest which may include the failure of any portion of the petition or circulator affidavit to meet the requirements of Article 11, Title 31, Colorado Revised Statutes (summarized above).

In this case, the Town Clerk certified the form of the proposed petition prior to its circulation as required by law. Neither of the protests allege any defects in the form of the Petition or any violations of the statutory requirements. Thus, there is no proper basis to even conduct a hearing on the protests. And, while the statute may seem to suggest that there may other proper grounds for protest, in fact, a hearing on political, legal, constitutional, or other substantive grounds is improper as explained in more detail below.

**2. SCOPE OF HEARING AND LIMITATIONS ON DISCRETION OF THE TOWN CLERK SITTING AS HEARING OFFICER IN A QUASI-JUDICIAL HEARING ON PROTESTS TO A PETITION FOR AN INITIATED MEASURE.**

With all due respect to the Town Clerk, her job in any hearing on a protest to a petition for an initiated measure is simply to consider objections to the “sufficiency” of the petition; not its merits or even its legality. We pause to emphasize again that any hearing is a quasi-judicial review by the Town Clerk of timely filed protests based on testimony and legal argument relevant to the purported grounds for each protest. The matter is not a general “public hearing” open to general public comment on the merits of the initiated measure. Accordingly, the Town Clerk in presiding over the hearing on February 19, 2019, must limit testimony and legal argument to the grounds stated in the purported protests.

The two protests appear to be making legal arguments. They do not present relevant factual matters which might be in dispute (which would otherwise require testimony by knowledgeable witnesses). Accordingly, we see little room for testimony of any witnesses and believe that the hearing should be limited to reasonable legal argument as to the validity of the two protests. By

analogy, the matter is before the Town Clerk on cross-motions for summary judgment for determination of legal issues.

**3. THE TOWN CLERK HAS NO DISCRETION TO SUSTAIN ANY PROTEST BASED ON ARGUMENTS OPPOSING THE SUBSTANCE OR THE MERITS OF THE INITIATED MEASURE INCLUDING ANY ARGUMENT THAT THE MEASURE MIGHT BE EVEN PARTIALLY UNENFORCEABLE OR UNCONSTITUTIONAL.**

An initiated measure is a means by which the electors of the Town of Lake City may legislate in place of the Board of Trustees of the Town. Initiative and referendum are powers reserved to the people by the Colorado Constitution. As stated in McKee v. City of Louisville, 616 P.2d 969 (Colo. 1980):

“All political power is vested in and derived from the people,” and all government originates from the people. Colo. Const. Art II, Sec. 1; [other citations omitted]. By the express provisions of the Colorado Constitution the people have reserved for themselves the right to legislate. Colo. Const. Art V, Sec. 1. This right is of the first order; it is not a grant to the people but a reservation by them for themselves. [citation omitted] The right of initiative pertains to any measure, whether constitutional or legislative, and in the case of municipalities, it encompasses legislation of every character:

“The initiative . . . powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special and municipal legislation of every character in or for their respective municipalities. Colorado Const. Art. V., Sec. 1. Like the right to vote, the power of initiative is a fundamental right at the very core of our republican form of government. [citations omitted].

McKee v. City of Louisville, 616 P.2d at 972.

In McKee, the Colorado Supreme Court considered the rejection by officials of the City of Louisville of a petition for an initiated measure to repeal an annexation ordinance. Like the case before us, the purported basis for rejection of the initiative petition had nothing to do with the form



of the petition or any argument that it was not properly signed by the requisite number of registered electors. Instead, the City officials ruled that the petitioners were not entitled to an election on their initiated measure because they believed the matter to be foreclosed by an emergency declaration in the annexation ordinance which barred statutory referendum procedures. The City officials did not provide any other explanation for refusing the initiative petition which had been filed independently of any referendum procedures.

Ruling against the officials of Louisville, the Supreme Court held that the petitioners were entitled to the requested election. As stated in the opinion quoted above, the Supreme Court emphasized the bedrock principles of legislative authority reserved to the people by the Colorado Constitution. In its ruling, the Supreme Court further expressly addressed the limits of the power of government (municipal) officials in these matters as follows:

“Government officials have no power to prohibit the exercise of the initiative by prematurely passing upon the substantive merits of the initiated measure. *City of Rocky Ford v. Brown*, 133 Colo. 262, 293 P.2d 974 (1956). Nor may the courts interfere with the exercise of this right by declaring unconstitutional or invalid a proposed measure before the process has run its course and the measure is actually adopted. *City of Rocky Ford v. Brown, supra; Speer v. People*, 52 Colo. 325, 122 P. 768 (1912). Then and only then, when actual litigants whose rights are affected are before it, may the court determine the validity of the legislation.

....

“The initiated measure proposed by the electors is clothed in the first instance with a presumption of validity, and its actual validity may be considered by the court only if and when it is adopted into law by the electorate.”

McKee v. City of Louisville, 616 P.2d at 972-73.

Further, the case primarily relied on in McKee (City of Rocky Ford v Brown, 133 Colo. 262, 293 P.2d 974 (1956)), is quite clear about the ministerial role of municipal officials in handling petitions for initiative measures, including the applicable penal provisions for violations by Town

officials in the handling of such matters. See C.R.S. 31-11-114(1)(f)(g) & (h).

The purported protests filed with the Town Clerk attempt to have the Town Clerk do exactly that which is prohibited by the Supreme Court in McKee. The protest by Jesse Kendall expresses “concern” about the petition and his belief that the “second paragraph is unconstitutional.” As clearly set forth in McKee, this is not a valid or permissible ground for protest of the Clerk’s finding of sufficiency of the initiated measure. Mr. Kendall also indicates other concerns about “the language” of the initiated measure. Such concerns may well be a basis for debate prior to the election but are not, however, relevant in this hearing. As for his last comment, there is no requirement in Article 11 of Title 31 that the form of an initiative petition must include directions or formatting for “yes” and “no” lines which will appear on ballots. The Town Clerk has already approved the form of the measure and the proponents have circulated their petition based on that approval.

The more lengthy and contentious protest filed by Ronald B. Bruce is an extensive recitation of supposed legal and constitutional arguments against the merits of the proposal, all of which is clearly prohibited from consideration by the Town Clerk by McKee. Mr. Bruce suggests that the measure, if adopted, might not be properly applied to certain OHVs registered or licensed in other states. Mr. Bruce recommends that the language of the petition be changed to include exceptions for such OHVs. However, Mr. Bruce is not the drafter of the petition before the Town Clerk and neither he, nor the Town Clerk, have any authority to tell the petitioners how to write their proposal. Even assuming that Mr. Bruce has correctly described the outcome of the litigation over out-of-state licensed OHVs, which is not conceded, that ruling would not require the Board

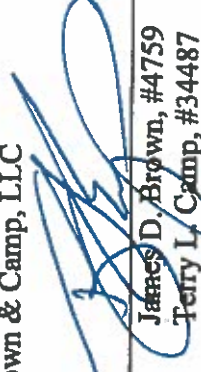
of Trustees or the registered electors of the Town legislating by initiative to include any express exceptions in the language of the ordinance. If the initiated ordinance as written cannot be applied to out-of-state OHVs as Mr. Bruce suggests, that is a matter that may only be taken into consideration in the enforcement of the ordinance "when actual litigants whose rights are affected" are before a Court. Neither Mr. Bruce, nor the officials of the Town of Lake City, have any authority to rewrite the initiated measure or to reject the measure for any such perceived shortcoming.

In summary, this matter is controlled by the ruling of the Colorado Supreme Court in *McKee v. City of Louisville*, supra. Under that ruling, the two protests filed in the matter wholly fail to set forth any grounds upon which the officials of the Town of Lake City may deny the Petition for the initiated measure and the required election thereof. Accordingly, the Town Clerk must certify the Petition for initiative measure to the Board of Trustees for calling of the required election.

Respectfully submitted on February 15, 2019.

Brown & Camp, LLC

By:



James D. Brown, #4759  
Terry L. Camp, #34487

Attorneys for Proponents