

ORDINANCE 15-2025 PROTEST HEARING Karen B. Goldman Hearing Office City of Greeley	
LEONARD WIEST, TOM HACKER, JOHN DEWITT, and ZACH BLIVEN, registered electors of the City of Greeley, Protesters,    v.  DAN WHEELER, and PAM BRICKER, in their capacities as a designated representative for the initiative to repeal Greeley Ordinance 15, 2025, Petitioners.	
<b>FINDINGS OF FACT AND CONCLUSION OF HEARING  OFFICER</b>	

## INTRODUCTION

A hearing on a protest to an initiative petition seeking to repeal Ordinance 2025-15 of the City of Greeley, Colorado, was held on Tuesday, August 26, 2025, at 10:00. The hearing officer was Karen Goldman, appointed by the Board of Trustees at their meeting on August 5, 2025. Assisting the hearing officer was special counsel to the City of Greeley, Kathy Haddock.

## BACKGROUND INFORMATION

The initiative petition was filed by a committee composed of Dan Wheeler and Pam Bricker, represented by Suzanne M. Taheri ("Petitioners"). The protest was filed by Leonard Wiest, Tom Hacker, John DeWitt, and Zach Bliven, represented by Christopher Beall ("Protesters").

The following actions took place prior to the hearing:

1. On June 27, 2025, the petition was approved as to form by the city clerk.
2. The number of minimum signatures required on the initiative petition was 4,586.

3. The number of signatures filed was 8,279.
4. Upon review of the signatures, the city clerk determined that 5,538 were valid, almost 1,000 signatures above the minimum number required.
5. The deadline for filing the initiative petition was August 6, 2025 and the petition was filed on that date.
6. The deadline for filing a protest was August 21, 2025 and a protest was filed on August 8, 2025.
7. The hearing officer was appointed by the Greeley City Council on August 5, 2025.

The following documents have been filed in this proceeding:

1. The Verified Election Protest filed with the City Clerk on August 8, 2025 (identified as Exhibit 3 in Protesters' Exhibit List).
2. Notice of Protest Hearing from the City Clerk sent August 18, 2025.
3. Corrected Notice of Protest Hearing sent August 19, 2025.
4. Joint Stipulations of Fact filed by the Protesters and Respondents August 21, 2025.
5. Motion to Dismiss and Response to Petition Protest filed by Respondents on August 21, 2025.
6. Protesters' Exhibit List filed August 21, 2025.
7. Protesters' Witness List filed August 21, 2025.
8. Respondents' Proposed Witness and Exhibits List filed August 21, 2025.
9. Pre-Hearing Order entered August 25, 2025.
10. Protesters' Reply to Petition Representatives' Response to Verified Protest filed August 25, 2025.

The Hearing Officer took administrative notice of the following documents:

11. Ordinance 2025-15 (attached to the Protest as Exhibit 2).
12. The Initiative Petition (attached to the Protest as Exhibit 1).
13. The city clerk's initial determination of petition sufficiency.

At the hearing, the Hearing Officer accepted as additional exhibits:

14. Council Agenda Summary for Ordinance 2025-15 for council meeting on April 15, 2025 (Exhibit 9 of Protesters' Exhibit List).
15. Letter of Suzanne Taheri dated April 17, 2025 on behalf of Greeley Deserves Better to Greeley Forward (Exhibit 20 of Protesters' Exhibit List).

The filed initiative petition has, as its purpose, the repeal of Greeley Ordinance 2025-15, the title for which is:

*An ordinance of the City Council of the City of Greeley concerning the financing of pre-development services for the design and construction of a new arena, ice center, hotel, and water park, and the supporting public improvements needed in connection therewith, and approving the execution and delivery by the city of a site lease agreement, and amendments thereto, and a lease purchase agreement, and amendments thereto, and related documents.*

The protest to the filed initiative made two arguments:

1. That the initiative petition is administrative and not legislative as required by the Colorado Constitution, Article V, Section 1(2) and is therefore unconstitutional.
2. The title of the initiative violates the 'fair and accurate' description requirement of the Greeley Municipal Code, Article III, Section 2-82.

Additionally, the petitioners filed a motion to dismiss on August 21, 2025 based on the following:

1. The protest was filed against the wrong party and in the wrong venue.
2. That any challenge to the ballot title must be filed in district court in accordance with C.R.S. §1-11-203.5.
3. Because Ordinance 2025-15 was legislative in nature, repeal of the ordinance is also legislative.
4. That the protest is an anti-SLAPP violation.

## **ARGUMENTS**

1. Christopher Beall, representing the protesters, stated there were both procedural and substantive considerations.
2. Regarding the proper people against whom the protest should be filed, Mr. Beall stated that initiative petition required petitioners and thus, they were the proper parties to protest the initiative petition. He further stated that laws gave citizens the right to protest and thus they were also necessary parties to protest the initiative petition.
3. Responding to petitioners' statement that the proper venue for protesting the language of the ballot title was not in the protest hearing and was instead at the district court level, in accordance with C.R.S. §1-11-203.5, Mr. Beall noted that since no notice of a hearing to set a ballot title was sent out, the protest hearing was the only way to challenge the ballot title and they were not here for judicial review.

4. Mr. Beall stated the city clerk is required to set the ballot title and that the hearing officer has the authority and jurisdiction to consider the adequacy of that title.
5. Mr. Beall stated that while anti-SLAPP allegations can be filed against people in lawsuits, a protest hearing is an administrative hearing, not a lawsuit, and thus the allegation is impermissible because free speech is not being denied. The government gets to decide to place something on a ballot and the voters get to decide by voting what will pass.
6. Mr. Beall stated that, when considering whether an initiative petition is legislative or administrative, *Vagneur v City of Aspen*, is the controlling law. In order determine whether something is legislative, one must look at the work product. Something is considered legislative if it is generally applicable and sets rules for future conduct. Ordinance 2025-15 is the result of Greeley working with a developer on a specific piece of property and that it is administrative because it applies only to that piece of property and to a particular time period. The ordinance does not set policy, is administrative, and thus repeal of the ordinance is also administrative.
7. Mr. Beall further stated that while the ballot title proposed by the city clerk did contain some of the same words as in the title of Ordinance 2025-15, it was the words that were missing from the ballot title that were necessary to ensure the ballot title language was fair and balanced. He specifically noted that the ballot title did not include language whereby the city council had determined that it provided a public benefit, that the use of COPs was not able to be repealed once they were entered into, and that the ordinance ratified past actions.
8. Mr. Beall concluded his argument by noting that the power of initiative is only for the purpose of legislative policy and not for the implementation of legislative policy. People cannot override the administrative decisions of city officials.

At this point, discussion focused on some of the proffered exhibits. With respect to Protesters' tendered exhibits 4-26, in the Pre Hearing Order the Hearing Officer ruled they were irrelevant to the proceedings and would not be admitted to the hearing. In the introduction at the hearing, the Hearing Officer stated she would take administrative notice of the exhibits. To clarify any confusion, the Hearing Officer noted that tendered exhibits 4-19 and 21-26 are all records of the City of Greeley, so the Hearing Officer can take administrative notice whether or not they are admitted as exhibits. Pursuant to arguments of the parties, Exhibit 9 was admitted for limited purposes as it was a summary of the first reading of Ordinance 2025-15 which was

subsumed in the second reading summary which was admitted as Petitioners' Exhibit A. Exhibit 20 was admitted as a letter from Petitioners' attorney that referred to the beliefs of the Petitioners.

1. Suzanne M. Taheri, representing the Petitioners, noted that the Greeley Municipal Code requires the city clerk to designate and fix the ballot title which was done when the initiative petition was approved as to form.
  2. Ms. Taheri stated that when a municipality adopts the Uniform Election Code, it adopts the entire code including the portion of statute which identifies the district court as the exclusive remedy for challenging the ballot title.
  3. Ms. Taheri stated that it is the government that sets the ballot title and thus it is the government that is an indispensable party of a protest hearing as is the city clerk. The Petitioners are named inappropriately, are required to defend something the government did, i.e., fix the title, something they cannot do nor can they provide any required relief. She also noted the Petitioners did not participate in any ballot title-setting process.
  4. Regarding her anti-SLAPP allegation, Ms. Taheri stated that while the law might not apply in a protest hearing, she would make such an argument in district court that people were being discouraged from their First Amendment rights. She had stated she had not made the anti-SLAPP violation argument as a cause of action in her Response.
  5. Ms. Taheri asked what difference it would make if the ordinance were administrative. If it were and the ordinance was repealed, then the city manager could simply implement its provisions. She noted that legislative action is required to transfer properties and approve debt; the ordinance does that, so it is legislative.
  6. Ms. Taheri stated that the difference between this initiated ordinance and the one considered in *Vagneur* is that the latter placed many administrative actions into the ordinance, such as design standards. This ordinance is different; while it does stop issuance of COPs, it doesn't rescind all prior contracts.
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1. In his final remarks, Mr. Beall noted that a protest is not a lawsuit. Initiative petitions must have representatives and when people sign on to be designated representatives of an initiative petition, they sign on to be represent the petition in the event there was a protest. The city clerk is, in accordance with the Greeley municipal code, the person to determine and fix the ballot title and is not a

- named party. She should not be considered a petition representative because she is a decision-maker.
2. Mr. Beall stated that the Constitutional right to initiative is limited to what the Supreme Court says is legislative and is not controlled by what the Greeley charter says or delegates power to.
  3. Mr. Beall noted that Ordinance 2025-15 contains sections dealing with contracts which in both *Vagneur* and *Witcher*, the Supreme Court stated that contracts were an administrative function, requiring administrative and financial expertise and were therefore inappropriate for a ballot.
  4. Mr. Beall stated the initiative petition did not repeal any policy; rather it repealed a specific ordinance containing administrative actions.

### **ANTI-SLAPP VIOLATION**

Without citing any law, Petitioners' Motion to Dismiss includes language that the Protest constitutes an anti-SLAPP (Strategic Lawsuit Against Public Participation) violation. The intent of the statute is to encourage and safeguard the constitutional rights of all persons to participate in government to the maximum extent permitted by law. C.R.S. §13-10-1101(1)(b). Protestors are exercising their right to protest an initiative petition filed by the Petitioners following the procedure of the Greeley Charter and Municipal Code. The Petitioners named in the Protest are the two representatives of the petition that agreed to represent the petition "in all matters affecting the petition" in accordance with Section 2-83(a) of the Greeley Municipal Code.

Further, at the hearing Ms. Taheri stated she was not raising the issue as a cause of action and she agreed with the Protesters' argument on this issue. Colorado's anti-SLAPP statute, C.R.S. §13-10-1101(3), requires a cause of action to be filed to support a claim for a SLAPP violation. There is no basis to support a claim of a SLAPP violation in this proceeding.

### **BALLOT TITLE**

Two arguments were presented regarding the ballot title. Petitioners alleged that the means of protesting the content of a ballot title is by the district court as provided in C.R.S. §1-11-203.5(1) and not as part of a protest hearing. Protesters alleged that the ballot title violated the 'fair and accurate' description requirement under the Greeley Municipal Code.

Petitioners argued that when a municipality, such as the City of Greeley, participates in a coordinated election, it adopts the provisions of the Uniform Election Code of 1992 (UEC), the set of statutes used by county clerk and recorders to conduct all the elections for which they statutorily required to conduct: Presidential and Congressional and State primaries, general elections, and coordinated elections. Petitioners further argued that when the UEC is adopted by a municipality in a coordinated election, all parts of the UEC, Articles 1 through 13 are adopted and apply to municipalities.

Protesters argued that the ballot title as fixed violates the 'fair and accurate' description requirement under the Greeley municipal code. They also challenged the Petitioners' contention that district court is the appropriate venue for challenging the ballot title and not the protest hearing. Protesters further argued this was their only opportunity to challenge the ballot title because they were not notified of a ballot title setting meeting nor did they attend one if it had been held.

There are three separate election codes in state statute. Two of them, the Municipal Election Code of 1965, C.R.S. §31-10-101, *et seq.* (MEC) and the Uniform Election Code of 1992, C.R.S. §1-1-101, *et seq.* (UEC) are utilized in municipal elections under specific circumstances. The MEC applies to municipal elections unless a municipality elects to follow the Uniform Election Code with respect to any election. C.R.S. §31-10-102.7.

Section 2-23(a) of the Greeley Municipal Code adopts the MEC for use in conducting municipal elections. In accordance with C.R.S. §31-10-102.7 which allows for the adoption of the UEC with respect to any election, Section 2-23(b) of the Greeley Municipal Code adopts the UEC in lieu of the MEC "for the purpose of participating in any coordinated election with the county. . ."

The UEC does not apply to the Petition or the Protest unless and until the measure is placed on the ballot of an election the City has determined to coordinate with the County. The initiative has not yet been placed on any ballot by the City.

Further, municipal initiatives are governed by C.R.S. §31-11-101, *et seq.*, not by C.R.S. §1-40-101, *et seq.* C.R.S. §31-11-111(1) requires the final ballot title to be fixed by the legislative body after an initiative election is ordered. While Section 2-83(a) the Greeley Municipal Code provides for the clerk to put a title on the petition form, it will not be known if the Greeley City Council decides to use that ballot title or one of its own unless and until it determines whether to put the initiative on the ballot. Therefore, there is not a final ballot title subject to dispute.

## **APPROPRIATE PARTIES**

Petitioners argued that the proper person against whom the protest should be filed is the city clerk who is responsible for setting the ballot title. If the ballot title is a topic for protest, only the government and the municipal clerk can respond; Petitioners have no role in this procedure and therefore have no ability to cure or amend the ballot title to ensure that it is fair and accurate. Protesters argued that the Petitioners, as representatives of the petition, are necessary to the petition and must be involved when a protest is filed against the petition they agreed, by signing on, to represent.

The role of a municipal clerk in an initiative process is to approve a petition as to form, create a summary for the petition, and, where authorized, to also create a ballot title which appears on the petition. Once the petition is filed, the municipal clerk then checks individual signatures to ensure that those who sign are eligible to do so and issues an initial determination of petition sufficiency.

The Greeley Municipal Code Section 2-83(a) requires, at the beginning of the initiative process, that a notice is filed designating

*'by name and mailing address two persons to serve as petition representatives in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.'*

Section 2-85(2)(f) requires that the petition representatives are designated on the petition itself:

*'A subheading, such as 'Petition Representatives' followed by the names and addresses of the petition representatives'*

If the form of the petition is incorrect or has portions missing upon first submission, the municipal clerk notifies the petition representatives. It is the petition representatives who are informed as to the number of minimum required signatures and the date for filing the petition. Upon initial determination of petition sufficiency, the municipal clerk notifies the petition representatives of that determination. And, if a protest is filed, it is the petition representatives who become parties to the protest. It must be noted that this protest is not 'against' any individuals; the protest argues elements of the initiative itself - whether the content of the initiative petition is administrative or legislative and whether the wording of the ballot title is fair and accurate. It is the role of the petition representatives to respond.



## LEGISLATIVE V ADMINISTRATIVE

The Colorado Constitution, Article V, Section 1(9), states that "*The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities.*" This same section states that '*municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation.*'

The courts have ruled that once the policy has been set by the council, which determination is legislative, actions implementing that policy are administrative and not subject to initiative or referendum. "Subjects of a permanent or general character are legislative, while those which are temporary in operation and effect are not...acts that are necessary to carry out existing legislative policies and purposes...are deemed administrative." *Vagneur* at ¶39 quoting *City of Aurora v. Zwerdinger*, 194 Colo. 192, 571 P.2d 1074 (1977). If administrative actions were subject to referendum or initiative, "it could result in chaos" and bring "the machinery of government to a halt." *Aurora v. Zwerdinger*, 194 Colo 192, 195, 571 P.2d at 1076 (1977) (quoting *Carson v. Oxenhandler*, 334 S.W.2d 394, 399 (Mo. Ct. App. 1960)); *Witcher v. Cañon City*, 716 P.2d 445, 452 (Colo. 1986); *Margolis v. Dist. Court*, 638 P.2d 197, 303 (Colo. 1981); *Blackwell v. Idaho Springs*, 731 P.2d 1250, 1253 (1987), *Vagneur* at ¶41. This policy is "grounded in separation of powers principles." *Vagneur* at ¶33, 45.

Here Ordinance 2025-15 sets the parameters for issuing certificates of participation to fund improvements necessary to implement the City's previously-adopted policy to catalyze development of real property on the west side of the City. In Greeley, the manner for exercising the initiative and referendum powers is contained in Article IX of the Greeley Charter and in the Greeley Municipal Code, specifically in Article III – Initiative and Referendum. This Article includes petition circulation deadlines, the form of the petition, circulator requirements, and the role of the city clerk, among other items.

The protest filed by Dan Wheeler and Pam Brinker is simple, it seeks to repeal Ordinance 2025-15, adopted by the Greeley City Council on May 6, 2025. The title of Ordinance 2025-15 is:

*An ordinance of the City Council of the City of Greeley concerning the financing of pre-development services for the design and construction of a*

*new arena, ice center, hotel, and water park, and the supporting public improvements needed in connection therewith, and approving the execution and delivery by the city of a site lease agreement, and amendments thereto, and a lease purchase agreement, and amendments thereto, and related documents*

One of the two topics for discussion in the protest filed by Leonard Wiest, Tom Hacker, John DeWitt, and Zach Bliven is whether this initiative is legislative or administrative in nature. If the former, it would be eligible to be placed on a ballot for citizen consideration; if the latter, it would not be eligible. It should be noted that because the initiative petition merely calls for the repeal of an existing ordinance, any discussion on this topic must be based on the ordinance seeking to be repealed.

When considering whether an ordinance is legislative, one must distinguish between the legislative process, the act of adopting an ordinance, and the contents of the ordinance – whether the ordinance reflects the City Council acting in its legislative capacity or its executive capacity; do the elements contained in the ordinance create policy or do they implement policy. In other words, all ordinances are adopted by a legislative process, but not all ordinances are legislative. City councils act in both legislative and executive/administration capacities. *Vagneur* at ¶38.

The legislative process, the act of adopting an ordinance, has several parts: placing the ordinance on a city council agenda for introduction (1<sup>st</sup> reading); ordering the publication and/or posting of the ordinance; often a public hearing; discussion and vote on the ordinance on 2<sup>nd</sup> and final reading; publishing notice of its adoption; and signing of the ordinance by the mayor with attestation by the city clerk. Ordinance 2025-15 was introduced on 1<sup>st</sup> reading on April 15, 2025, and passed by the City Council on May 6, 2025. No arguments were made that the legislative process had not been followed nor that any procedures were omitted.

Thus, if it is the legislative process that is being called into question, the challenge would be whether the ordinance was legitimately adopted as a procedural matter. That is not this case.

The basic argument of the protest is not whether legal procedures were followed; instead, it is whether Ordinance 2025-15 is, in and of itself, an ordinance creating policy (legislative) or whether it is an ordinance that simply implements policy (executive/administrative). To answer that question, it is helpful to look at portions of the text of Ordinance 2025-15.

The ordinance states in its second recital: *'WHEREAS, the City desires to catalyze development of certain real property located on the west side of the City within the boundaries of the City (the 'West Greely Project Area') in order to perpetuate economic growth, promote job creation, target and install new services, generate new tax revenues, design and build public gathering spaces, attract a skilled workforce, provide infrastructure upgrades, and build out cultural and lifestyle amenities for its citizens and the general public'* This is a clear and detailed statement of policy. The recitals which follow this statement of policy outline and further identify past actions that the City had taken to implement this policy: entering into an MOU with The Water Valley Company; and approving a Pre-Development Services and Financing Agreement (PDSA) between the City and developer. While these actions pre-date the adoption of Ordinance 2025-15 and are not being used to consider the nature of this ordinance, it is clear the policy was set before any of these previous actions were conducted.

Looking at some of the sections within the ordinance itself, one can see that Ordinance 2025-15 also implements the previously-established policy:

Section 3 provides authorization for undertaking the City's responsibilities under the previously-adopted PDSA and financing eligible costs of the Catalyst Project Pre-Development Scope;

Section 4 delegates the authority to determine the timing of securing funds to the City Manager;

Section 5 delegates to municipal staff the independent authority to sign a contract for the purchase of Certificates of Participation to lock in interest rates and other financial terms consistent with and *'in order to carry out the purposes of this Ordinance'*.

Section 7 authorizes the mayor, city clerk, city manager, chief financial officer and other appropriate employees and officials to *'execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance'*.

Just because an ordinance has been adopted by a legislative process doesn't mean all ordinances are thereby legislative. As conceded by the petitioners, some adopted ordinances do include administrative procedures or are, by their very nature, wholly administrative. For example, the following have been determined to be administrative: setting municipal utility rates – *Aurora v. Zwerdinger* 194 Colo. 192, 571 P.2d 1074 (1977); approving

lease amendments to the Royal Gorge Bridge that included a financing component - *Witcher v. Cañon City*, 716 P.2d 445, 452 (Colo. 1986); determining the location of a city hall and determining the priority of building public improvements funded by a previously approved sales tax - *Idaho Springs v. Blackwell* 731 P.2d 1250 (1987).

This initiative is similar to the one that culminated in the *Vagneur* decision. Petitioners were seeking to alter the alignment of the road leading into Aspen, Colorado, and included in the petition administrative details such as pedestrian access, bridge construction, and bus lanes. When the petitioners were asked if those elements could be removed from the petition to allow the citizens to only vote on the road alignment, they said no, that those items were integral to the initiative petition. The hearing officer thus ruled that the initiative was administrative in nature, those items being the purview of elected officials, engineers, and municipal staff and not legislation subject to initiative.

While this initiative doesn't add any administrative details, in fact, it adds nothing at all; it repeals an ordinance which contains administrative details and it is thus the ordinance one has to look at. Like the Aspen, Colorado, initiative, this ordinance includes many administrative aspects regarding financing mechanisms, obtaining financing, and contract negotiations. These elements cannot be removed from the ordinance because those are essential to furthering the policy regarding the west side of Greeley. Additionally, as the title of the ordinance states, its purpose is to approve the financing for the design and construction of certain facilities and to approve and execute certain documents and contracts, all clearly administrative acts.

## **FINDINGS OF FACT AND CONCLUSION**

The Hearing Officer finds that the provision for challenging a ballot title through the Uniform Election Code of 1992 does not apply to municipal ballot titles for initiatives fixed by the municipality. The Hearing Officer further finds that neither the Greeley charter nor the municipal code authorize the challenge of a ballot title in a protest proceeding. Any challenge to the ballot title would have to occur after the final ballot title is set if and when the initiative is placed on the ballot.

The Hearing Officer hereby finds that, while adopted through an authorized legislative process, Ordinance 2025-15 is not a legislative ordinance. Therefore, the initiative petition seeking its repeal is also not legislative

The Hearing Officer therefore overturns the initial determination of petition sufficiency made by the Greeley City Clerk and declares the initiative cannot be sent to the ballot for a vote by the citizens of Greeley.

Entered this 31st day of August, 2025,

**HEARING OFFICER**

/s/ Karen B. Goldman  
Karen B. Goldman

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of August, 2025, a true and correct copy of the foregoing was served on the Parties, via email, addressed as follows:

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