

District Court County Court Other _____

San Juan County, Colorado
Court Address:

San Juan County Courthouse
1557 Greene Street
P O Box 900
Silverton, CO 81433

FILED
IN COMBINED COURT
DATE FILED SAN JUAN COUNTY, COLORADO

JUN 21 2023

DEPUTY CLERK

Plaintiff: John H. Wright, protestor and requestor

v.

Defendant:

▲ COURT USE ONLY ▲

Case Number: 23CV1

Division: Courtroom:

Request for Judicial Review of Petition Sufficiency on a Citizen Ballot Initiative Intended for a Muncipal Election,
Town of Silverton, Colorado

To: District Court of San Juan County, Colorado
From: John H. Wright, Silverton, CO
Date: June 15, 2023
Subject:

**Urgent Request for Review of Petition Sufficiency on a Citizen Ballot Initiative intended for a
Municipal Election, Town of Silverton, Colorado**

I ask the District Court to review an invalid citizen petition, dated April 14, 2023, which was deemed "sufficient" by the Town Clerk of Silverton following a protest of that petition. The petition is in process of being scheduled for a Town of Silverton municipal vote via special election. The matter will next be considered at a Silverton Town Council meeting on 26 June 2023.

The petition seeks to reinstate those elements of the Town of Silverton Municipal Code dealing with the operation of Off Highway Vehicles within the town limits that had been repealed as a result of the Town of Silverton municipal election held October 12, 2021.

CRS 31-11-110(3) directs as follows: "The determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protester, the persons designated as representing the petition proponents pursuant to section 31-11-106 (2), or the municipality, **but such review shall be had and determined forthwith**" (emphasis added).

I, John H. Wright, protestor, request the District Court's review of the validity of the petition, the subsequent Town Clerk's finding of sufficiency despite the protest, and intercession in the matter by the Court if warranted.

Supporting documents accompany this request include:

- 1) This request letter,
- 2) The petition itself,
- 3) The protest of the petition by John Wright,
- 4) Town Clerk's declaration of sufficiency following a memorandum from the Town Attorney.

I protest the April 14, 2023 petition to allow OHV use in the Town of Silverton for this reason: The petition contains extraneous material which is not allowed under Colorado Revised Statutes Title 31, Article 11.

Regarding the attached memorandum from the Town Attorney, please note the attorney's point #5: "Definition" ... of extraneous material. Namely: "In order to analyze what constitutes 'extraneous material' we must first understand the definition as it is applied in the context of ballot initiatives."

CRS 31-11 does not explicitly define "extraneous material", as it does other terms. Nor does the attorney cite a source reference for the term.

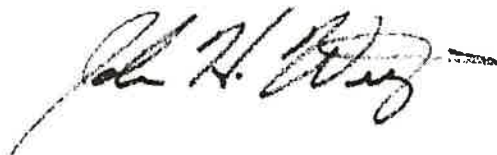
By contrast, CRS 31-11-106 (1) specifically states: "The clerk shall assure that the petition section contains only those elements required by this article and contains no extraneous material." A layman's understanding of that would be: extraneous material is anything that is not required by CRS 31-11-106.

Moreover, the attorney fails to address CRS 31-11-111(1), a crucially important part of the protest, of which states: "**After an election has been ordered** pursuant to section 31-11-104 or 31-11-105, the legislative body of the municipality or its designee shall promptly fix a ballot title for each initiative or referendum." **No election had yet been scheduled.** Thus, the prerogative for fixing the ballot title (which was prematurely and incorrectly included in the petition) should have fallen to the legislative body after they ordered the election, not to the clerk or to the petitioners as part of the petition.

As for the attorney's point #7, dealing with Assertion 2, the reviewer will just have to read the cited portion of the petition and see if the reviewer agrees with the Town Attorney that *it is NOT* extraneous material.

The Court's timely response to this request will be greatly appreciated.

Thank you.

A handwritten signature in black ink, appearing to read "John H. Wright", with a horizontal line extending to the right from the end of the signature.

Please reply to:
John H. Wright, Protestor

1 (2)

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Summary of the Proposed Initiative:

The initiative is intended to propose an amendment to Section 8-3-30 and establishment of subsequent sections of the Silverton Municipal Code to address operation of Off-Highway Vehicles (hereby referred to as OHVs) on certain Town of Silverton streets.

Off-highway vehicles are defined in Sec. 8-3-10 of the Silverton Town Code as "any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally, and commonly used to transport persons for recreational purposes." Off-highway vehicles do not include vehicles designed and used primarily for travel on, over or in the water, snowmobiles, military vehicles; golf cars; vehicles designed and used to carry disabled persons; vehicles designed and used specifically for agricultural, logging or mining purposes; vehicles registered pursuant to Article 3 of Title 42, C.R.S.

The current Town of Silverton Municipal Code prohibits the use of OHVs on all Town of Silverton streets, alleys, and rights-of-way.

This initiative proposes to establish the following streets for OHV use:

- The portion of Greene Street from 7th Street to Town Limits connecting with County Road 2
- The segments of County Road 2 and County Road 110a that cross into Town Limits
- The portion of Blair Street from Greene Street to Town Limits connecting with County Road 2
- The portion of Blair Street between 10th Street and 14th Street
- The Portion of 7th Street from Reese Street to Mineral Street
- The portion of Mineral Street and Cement Street from 5th, 6th, and 7th street to access RV parks contained within that loop.
- The portion of 9th Street from Greene Street to Empire Street
- The portion of 10th Street from Greene Street to Blair Street
- The portion of 11th Street from Greene Street to Blair Street
- The portion of 12th Street from Greene Street to Blair Street
- The portion of 13th Street from Greene Street to Blair Street
- The portion of 14th Street from Greene Street to Town Limits connecting with County Road 33

The ordinance in this initiative further allows for the Town Board of Trustees to expand the OHV route at their discretion.

BALLOT QUESTION:

"Shall a route be established to allow the use of Off-Highway Vehicles on streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and trail-head access?"

A "YES" vote would allow OHV use on the route listed above.

A "NO" vote would maintain the status quo, prohibiting OHV use on all streets, alleys, and rights of way within Town of Silverton limits.

Proposed Initiative:

Section 8-3-30 is hereby amended as follows:

In accordance with Section 33-14.5-108(1)(f) of Colorado Revised Statutes, the sections of the streets described in section 8-3-40 below are established as a route for Off Highway Vehicle operation within the Town of Silverton

Section 8-3-40 is hereby established as follows:

- The portions of streets designated as an Off-Highway Vehicle Route are as follows:
 - The portion of Greene Street from 7th Street to Town Limits connecting with County Road 2
 - The segments of County Road 2 and County Road 110 Silverton Bypass that cross into Town Limits
 - The portion of Blair from Greene Street to Town Limits connecting with County Road 2
 - The portion of Blair Street between 10th Street and 14th Street
 - The Portion of 7th Street from Reese Street to Mineral Street
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 - The portion of 9th Street from Greene Street to Empire Street
 - The portion of 10th Street from Greene Street to Blair Street
 - The portion of 11th Street from Greene Street to Blair Street
 - The portion of 12th Street from Greene Street to Blair Street
 - The portion of 13th Street from Greene Street to Blair Street
 - The portion of 14th Street from Greene Street to Town Limits connecting with County Road 33
- No person shall operate an off-highway vehicle in the Town pursuant to this article, except along the designated route described above in Section 8-3-40(a).
- Town roads designated as OHV routes may be revised to expand for additional right-of-way access at the discretion of the Town Board of Trustees

~~301/35~~ signatures verified on section 2

301/35
27128 signatures verified on section 2

53/35 signatures acquired

Section 1 initial signatures

- line 7: address mismatch - Mike Heath
- line 14: address mismatch - Linda Clalley
- line 15: crossed out - Mike Emery
- R.3 : not in here - Sandra Emery
- line 21: address mismatch - Brian Fulmer

[Signature] Matt Green, Town Clerk 4/19/23

Representatives of this petition, the proposed ordinance in this initiative will be referred to the Board of Trustees of the Town of Silverton for consideration. If the Board of Trustees does not adopt the proposed ordinance, the petitioners request that the ordinance be referred to the registered electors of the Town of Silverton at a special election to be set between 60 and 150 days from the final determination of sufficiency if the proposed ordinance is not adopted by the town board.

Jim Lokey Tommy Wipf
PO Box 346 PO Box 588
Silverton, CO 81433 Silverton, CO 81433

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The current Town of Silverton Municipal Code prohibits the use of OHVs on all Town of Silverton streets, alleys, and rights-of-way. This initiative proposes to establish the following streets for OHV use:

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 - The portion of 13th Street from Greene Street to Blair Street
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- The ordinance in this initiative further allows for the Town Board of Trustees to expand the OHV route at their discretion.

BALLOT QUESTION:

"Shall a route be established to allow the use of Off-Highway Vehicles on streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and prohibiting the use of Off-Highway Vehicles in residential areas?"

A "YES" vote would allow OHV use on the route listed above.

A "NO" vote would maintain the status quo, prohibiting OHV use on all streets, alleys, and rights of way within Town of Silverton limits.

#	Print Name	SIGNATURE	Street Address	City	County	Date
1	Evelyn J Perino	<i>Evelyn Perino</i>	1263 Mineral St	Silverton	SAN JUAN	4/1/23
2	Richard PERINO	<i>Richard Perino</i>	1263 Mineral St	SILVERTON	JUAN	4/1/23
3	Molly Noel-Borda	<i>Molly Noel-Borda</i>	1227 Greene St	Silverton	San Juan	4-1-23
4	Flora Baeza	<i>Flora Baeza</i>	1227 Greene St	Silverton	San Juan	4-1-23
5	Rosa Marie Raab	<i>Rosa Marie Raab</i>	1681 Snowden St	Silverton	San Juan	4-1-23
6	LAWRENCE RABBITZ	<i>Lawrence Rabbits</i>	1681 Snowden St	Silverton	SAN JUAN	4-1-23
7	Michael Paul Hook	<i>Michael Hook</i>	1129 Grove St	Silverton	San Juan	4-1-23
8	Dana Ann Chambers	<i>Dana Chambers</i>	1270 Snowden St.	Silverton	San Juan	4-3-23
9	Charlene Joyce Monsalve	<i>Charlene Monsalve</i>	777 Grove St.	Silverton	San Juan	4-3-23
10	Amos D Jacomillo	<i>Amos Jacomillo</i>	331 E. 14th St.	Silverton	SAN JUAN	4-11-23
11	Fred C Fasching	<i>Fred Fasching</i>	1450 Snowden	SILVERTON	SAN JUAN	4-11-23
12	Patricia Dailey	<i>Patricia Dailey</i>	1245 Greene St	Silverton	San Juan	4-11-23
13	Amelia Dailey	<i>Amelia Dailey</i>	1245 Greene St	Silverton	San Juan	4-11-23
14	Hinda Raab	<i>Hinda Raab</i>	1297 Greene St	Silverton	San Juan	4-11-23
15	Maria Raab	<i>Maria Raab</i>	1558 Snowden	Silverton	San Juan	4-11-23

address does not match voter log

As address does not match voter log crossed out with sharpshin

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BALLOT QUESTION:

"Shall a route be established to allow the use of Off-Highway Vehicles on streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and prohibiting the use of Off-Highway Vehicles in residential areas?"

A "YES" vote would allow OHV use on the route listed above.

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Not in numbered line

#	Print Name	SIGNATURE	Street Address	City	County	Date
16	Jerry Berger	[Signature]	839 Reese St	Silverton	San Juan	4-11-23
17	Travis Shaw Row	[Signature]	1610 Green St	Silverton	San Juan	4/11/23
18	PATRICIA L BRING	[Signature]	1839 REESE	Silverton	San Juan	4/11/23
19	Brian E Luther	[Signature]	1231 Blain	Silverton	San Juan	4/11/23
20	Charles J Anderson	[Signature]	342 E 14 th	Silverton	San Juan	4/11/23
21	Linda G Luther	[Signature]	1239 Reese	Silverton	San Juan	4/11/23
22	Brenda M Emery	[Signature]	1558 Broaden	Silverton	San Juan	4-11-23
23	Robert M Emery	[Signature]	1558 Broaden	Silverton	San Juan	4-11-23
24	Jean Lor Deitch	[Signature]	858 Reese	Silverton	San Juan	4-11-23
25	Gina Maria Rosato	[Signature]	1234 Greene Street # 2	Silverton	San Juan	4-11-23
26	Wynn Ravison GERMACK	[Signature]	1234 GREEN ST	SILVERTON	SAN JUAN	4-11-23
27	LEVI LOKEY	[Signature]	1044 GREEN ST	Silverton	SAN JUAN	4/11/23
28	Elizabeth Rowe	[Signature]	1208 Greene St.	Silverton	San Juan	4/11/23
29	KULLIGER	[Signature]	1104 Blair	SILVERTON	SAN JUAN	4/13/23
30	George Davidovic	[Signature]	460 Empire St	Silverton	San Juan	4/13/23

Address does not match voter roll

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The ordinance in this initiative further allows for the Town Board of Trustees to expand the OHV route at their discretion.

BALLOT QUESTION:

"Shall a route be established to allow the use of Off-Highway Vehicles on streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and prohibiting the use of Off-Highway Vehicles in residential areas?"

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#	Print Name	SIGNATURE	Street Address	City	County	Date
31	Ronetta Sue Sander	<i>Ronetta Sue Sander</i>	1616 Empire St	Silverton	San Juan	4/13/23
32	COLE WALKER DAVENPORTS	<i>Cole Walker</i>	1333 GREENE	SILVERTON	SAN JUAN	4/1/23
32	Ronelope Ann Higgins	<i>Ronelope Ann Higgins</i>	252 E 11th St	Silverton	SAN JUAN	4/13/23
39	Michael Maxfield	<i>Michael Maxfield</i>	1467 Animas St	Silverton	SAN JUAN	4/13/23
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Jim Lokey Tommy Wipf
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 Silverton, CO 81433 Silverton, CO 81433

Affidavit

The affiant, who is the circulator of this petition section, declares as follows:

1. My name and address are:

Printed Name Jimmie L Lokey

Residence Address 664 Greene St

Town Silverton

County San Juan

Date of signing (below) 4/14/23

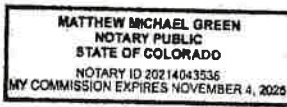
- 2. I have read and understand the laws governing the circulation of petition;
- 3. I am/was 18 years or older at the time this section of the of the petition was circulated and signed by the listed electors;
- 4. I circulated this section of the petition;
- 5. Each signature on this section was affixed in my presence;
- 6. Each signature on this section is the signature of the person whose name it purports to be;
- 7. To the best of my knowledge and belief, each of the persons signing the petition was, at the time of signing, a registered elector; and
- 8. That I have not paid or will not in the future pay and that I believe 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.

Affiant signature: [Signature]

Witnessed by: Matt Green
State of Colorado

County of San Juan
The foregoing signature was witnessed by me this 14th day of April, 2023
at Silverton, CO by Jim Lokey (name of affiant)

Signature of Notary Public: [Signature]
Name of Notary Public (printed): Matt Green
Notary Public, State of Colorado
My commission expires: 4 Nov 2025 Seal:



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BALLOT QUESTION:

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 - The portion of 14th Street from Greene Street to Town Limits connecting with County Road 33
- No person shall operate an off-highway vehicle in the Town pursuant to this article, except along the designated route described above in Section 8-3-40(a).
- Town roads designated as OHV routes may be revised to expand for additional right-of-way access at the discretion of the Town Board of Trustees

30/35 signatures verified on section 1
23/28 signatures verified on section 2

53/35 signatures acquired

Section 2 invalid signatures:

- line 3: mismatched address - Brittany Aragon*
- line 8: " " - Anne Rice*
- line 14 " " - Terry Chambers*
- line 18 " " - Galt, Stephen*
- line 24 Duplicate from SL - Cole Deeney*

Representatives of this petition, the proposed ordinance in this initiative will be referred to the Board of Trustees of the Town of Silverton for consideration. If the Board of Trustees does not adopt the proposed ordinance, the petitioners request that the ordinance be referred to the registered electors of the Town of Silverton at a special election to be set between 60 and 150 days from the final determination of sufficiency if the proposed ordinance is not adopted by the town board.

Jim Lokey Tommy Wlpf
PO Box 346 PO Box 588
Silverton, CO 81433 Silverton, CO 81433

WARNING: AGAINST THE LAW: for anyone to sign any initiative or referendum 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 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.** Do not sign this petition unless you unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

Summary of the Proposed Initiative:

The initiative is intended to propose an amendment to Section 8-3-30 and establishment of subsequent sections of the Silverton Municipal Code to address operation of Off-Highway Vehicles (hereby referred to as OHVs) on certain Town of Silverton streets. Off-highway vehicles are defined in Sec. 8-3-10 of the Silverton Town Code as "any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally, and commonly used to transport persons for recreational purposes." Off-highway vehicles do not include vehicles designed and used primarily for travel on, over or in the water, snowmobiles, military vehicles; golf cars; vehicles designed and used to carry disabled persons; vehicles designed and used specifically for agricultural, logging or mining purposes; vehicles registered pursuant to Article 3 of Title 42, C.R.S.

The current Town of Silverton Municipal Code prohibits the use of OHVs on all Town of Silverton streets, alleys, and rights-of-way. This initiative proposes to establish the following streets for OHV use:

- The portion of Greene Street from 7th Street to Town Limits connecting with County Road 2
- The segments of County Road 2 and County Road 110a that cross into Town Limits
- The portion of Blair from Greene Street to Town Limits connecting with County Road 2
- The portion of Blair Street between 10th Street and 14th Street
- The Portion of 7th Street from Reese Street to Mineral Street
- The portion of Mineral Street and Cement Street from 5th, 6th, and 7th street to access RV parks contained within that loop.
- The portion of 9th Street from Greene Street to Empire Street
- The portion of 10th Street from Greene Street to Blair Street
- The portion of 11th Street from Greene Street to Blair Street
- The portion of 12th Street from Greene Street to Blair Street
- The portion of 13th Street from Greene Street to Blair Street
- The portion of 14th Street from Greene Street to Town Limits connecting with County Road 33

The ordinance in this initiative further allows for the Town Board of Trustees to expand the OHV route at their discretion.

BALLOT QUESTION:

"Shall a route be established to allow the use of Off-Highway Vehicles on streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and prohibiting the use of Off-Highway Vehicles in residential areas?"

A "YES" vote would allow OHV use on the route listed above.

A "NO" vote would maintain the status quo, prohibiting OHV use on all streets, alleys, and rights of way within Town of Silverton limits.

#	Print Name	SIGNATURE	Street Address	City	County	Date
1	GERYAK, MICHAEL P.	Michael P Geryak	1735 MINERAL ST	SILVERTON	SAN JUAN	4/6/23
2	PATRIKA WIPF	Patrick Wipf	963 SNOWDEN ST	SILVERTON	SAN JUAN	4/7/2023
3	MORAGBY, BOB HORN M.	Bob Horn	1789 Cement St	SILVERTON	SAN JUAN	4/7/2023
4	Baldwin, Kevin E.	Kevin E. Baldwin	1438 Sargent Street	Silverton	SAN JUAN	4/7/2023
5	Morris, John Robert	John Morris	1717 Greene Street	Silverton	SAN JUAN	4/7/23
6	Pellowski, Cam Marie	Cam Pellowski	1129 Greene Street	Silverton	SAN JUAN	4/7/23
7	Rhoades, Rebecca	Rebecca Rhoades	869 Greene St.	Silverton	SAN JUAN	4/7/23
8	Rico, Nicole	Nicole Rico	1407 Rose Street	Silverton	SAN JUAN	4/7/23
9	Maribel Skow	Maribel Skow	553 Greenest	Silverton	SAN JUAN	4/7/23
10	ZER, FANNIE P.	Fannie Zer	119 E 14th	Silverton	SAN JUAN	4/7/23
11	ALDRICATA, MICHAEL F.	Michael Aldricata	342 E. 14th ST	Silverton	SAN JUAN	4/7/23
12	Gurule, Joseph	Joseph Gurule	964 Emp 5 St.	Silverton	SAN JUAN	4-7-23
13	EGERT, EDITH M.	Edith M Egert	907 Reese St	Silverton	SAN JUAN	4-7-23
14	STREIB, CHUMBEIS	Chumbeis Streib	7406 Greene	Silverton	SAN JUAN	4-8-23
15	TERRY S. RHOADES	Terry S Rhoades	755 Emp 5 St.	Silverton	SAN JUAN	4-9-23

address does not match voter roll

address does not match voter roll

address does not match voter roll

Representatives of this petition, the proposed ordinance in this initiative will be referred to the Board of Trustees of the Town of Silverton for consideration. If the Board of Trustees does not adopt the proposed ordinance, the petitioners request that the ordinance be referred to the registered electors of the Town of Silverton at a special election to be set between 60 and 150 days from the final determination of sufficiency if the proposed ordinance is not adopted by the town board.

Jim Lokey Tommy Wipf
PO Box 346 PO Box 588
Silverton, CO 81433 Silverton, CO 81433

Petition Section 2 of 2, Page 3 of 11

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The initiative is intended to propose an amendment to Section 8-3-30 and establishment of subsequent sections of the Silverton Municipal Code to address operation of Off-Highway Vehicles (hereby referred to as OHVs) on certain Town of Silverton streets. Off-highway vehicles are defined in Sec. 8-3-10 of the Silverton Town Code as "any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally, and commonly used to transport persons for recreational purposes." Off-highway vehicles do not include vehicles designed and used primarily for travel on, over or in the water, snowmobiles, military vehicles; golf cars; vehicles designed and used to carry disabled persons; vehicles designed and used specifically for agricultural, logging or mining purposes; vehicles registered pursuant to Article 3 of Title 42, C.R.S.

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The ordinance in this initiative further allows for the Town Board of Trustees to expand the OHV route at their discretion.

BALLOT QUESTION:

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A "YES" vote would allow OHV use on the route listed above.

A "NO" vote would maintain the status quo, prohibiting OHV use on all streets, alleys, and rights of way within Town of Silverton limits.

#	Print Name	SIGNATURE	Street Address	City	County	Date
16	EGGETT, Teri Ann	<i>Teri Eggett</i>	1740 GREENE ST	Silverton	SAN JUAN	4-10-23
17	EGGETT, EDITH Wilma	<i>Ed Eggett</i>	1142 GREENE ST	Silverton	SAN JUAN	4-10-23
18	Gaulty Adam S. MARY	<i>Adam Gaulty</i>	1770 GREENE ST	Silverton	SAN JUAN	4/10/23
19	FRIES, WILMA III	<i>Wilma Fries</i>	731 EMPIRE	SILVERTON	SAN JUAN	4/10/23
20	PATRICK G. ARCHULETA	<i>Patrick Archuleta</i>	1365 SPOON DR	SILVERTON	SAN JUAN	4-10-23
21	WEBB KENNETH WEBB	<i>Kenneth Webb</i>	1146 BLAIR ST	Silverton	SAN JUAN	4-10-23
22	Fries, Kelli Marquende	<i>Kelli Fries</i>	731 EMPIRE ST	Silverton	SAN JUAN	4-10-23
23	SIMPSON PETER JOSEPH	<i>Peter Simpson</i>	1695 SPOON DR	SILVERTON	SAN JUAN	4-10-23
24	DUNFORD COLE, WALTER	<i>Walter Dunford</i>	1733 GREENE ST	SILVERTON	SAN JUAN	4/10/23
25	HARRIS, BEVAN LATONIA	<i>Bevan Harris</i>	840 REESE ST	Silverton	SAN JUAN	4/10/23
26	MORDELL, CARSON	<i>Carson MordeLL</i>	1721 CEMENT ST	SILVERTON	SAN JUAN	4/11/23
27	JUSTIN SWANSON	<i>Justin Swanson</i>	912 GREENE ST	Silverton	SAN JUAN	4/11/23
28	WAKEFIELD Ron W	<i>Ron Wakefield</i>	1070 CEMENT ST	Silverton	SAN JUAN	4-11-23
29						
30						

address does not match internet

duplicate from section 1

Representatives of this petition, the proposed ordinance in this initiative will be referred to the Board of Trustees of the Town of Silverton for consideration. If the Board of Trustees does not adopt the proposed ordinance, the petitioners request that the ordinance be referred to the registered electors of the Town of Silverton at a special election to be set between 60 and 150 days from the final determination of sufficiency if the proposed ordinance is not adopted by the town board.

Jim Lokay Tommy Wlpi
PO Box 346 PO Box 588
Silverton, CO 81433 Silverton, CO 81433

Affidavit

The affiant, who is the circulator of this petition section, declares as follows:

1. My name and address are:

Printed Name Tommy B. WIPF
Residence Address 963 SNOWDEN
Town SILVERTON CO
County SAN JUAN
Date of signing (below) 14 APR 23

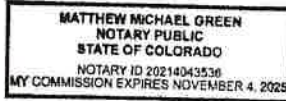
- 2. I have read and understand the laws governing the circulation of petition;
- 3. I am/was 18 years or older at the time this section of the of the petition was circulated and signed by the listed electors;
- 4. I circulated this section of the petition;
- 5. Each signature on this section was affixed in my presence;
- 6. Each signature on this section is the signature of the person whose name it purports to be;
- 7. To the best of my knowledge and belief, each of the persons signing the petition was, at the time of signing, a registered elector; and
- 8. That I have not paid or will not in the future pay and that I believe 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.

Affiant signature: [Signature]

Witnessed by: Matt Green
State of Colorado
County of San Juan

The foregoing signature was witnessed by me this 14th day of April, 2023
at Silverton, CO by Tommy Wipf (name of affiant)

Signature of Notary Public: [Signature]
Name of Notary Public (printed): Matt Green
Notary Public, State of Colorado
My commission expires: 4 Nov 2025 Seal:



Representatives of this petition, the proposed ordinance in this initiative will be referred to the Board of Trustees of the Town of Silverton for consideration. If the Board of Trustees does not adopt the proposed ordinance, the petitioners request that the ordinance be referred to the registered electors of the Town of Silverton at a special election to be set between 60 and 150 days from the final determination of sufficiency if the proposed ordinance is not adopted by the town board.

Jim Lukey Tommy Wipf
PO Box 346 PO Box 588
Silverton, CO 81433 Silverton, CO 81433

3

To: Clerk, Town of Silverton
From: John H. Wright
Date: May 22, 2023
Subject: PROTEST

I, John H. Wright, am a registered voter in San Juan County, Colorado who resides at 1872 CR 110 within the Town of Silverton. My mailing address is P. O. Box 308, Silverton, CO 81433.

I protest the April 14, 2023 petition to allow OHV use in the Town of Silverton for this reason: The petition contains extraneous material which is not allowed under Colorado Revised Statutes Title 31, Article 11.

CRS 31-11-106(1) reads in its entirety, with emphasis added in **bold**:

"Each petition section shall be printed in a form consistent with the requirements of this article. No petition section shall be printed or circulated unless **[1] the form and [2] the first printer's proof** of the petition section have first been approved by the clerk. The clerk shall approve or reject **[1] the form and [2] the first printer's proof** of the petition no later than five business days following the date on which the clerk received such material. The clerk shall assure that the petition section contains only those elements required by this article and contains no extraneous material. The clerk may reject a petition or a section of a petition on the grounds that the petition or a section of the petition does not propose municipal legislation pursuant to section 1 (9) of article V of the state constitution."

The statute is unambiguous about the clerk's responsibilities for approving **[1] the form, and [2] the printer's proof** prior to authorizing a petition for circulation. Likewise, the statute is unambiguous that the clerk shall assure the petition contains no extraneous material beyond the elements required by the article. That the petition was circulated for signatures implies the clerk *did* approve its **[1] form, and [2] the printer's proof** prior to that circulation, and that the petition contained no extraneous material.

The petition of April 14, 2023 contains at least two instances of extraneous material. They are:

1. Inclusion of the Ballot Title (identified as the "Ballot Question") in the petition section between the Summary of the Proposed Initiative and the Text of the Proposed Initiative on the first page of the petition, and included on every page thereafter following the Summary of the Proposed Initiative. The "Ballot Question" has nothing to do with either the Summary or the Text.

"Ballot Title", "Submission Clause", and "Title" are well defined in CRS 31-11-103 (1), (4), and (5).

CRS 31-11-111 (1) reads: "After an election has been ordered pursuant to section 31-11-104 or 31-11-105, the legislative body of the municipality or its designee shall promptly fix a ballot title for each initiative or referendum."

No election has yet been ordered. Moreover, the prerogative for fixing the ballot title falls to the legislative body, not to the clerk or the petitioner. For those reasons, language pertaining to a hypothetical "Ballot Title" ("Ballot Question") has no place in the petition. That language is therefore **extraneous material**.

[John H. Wright, May 2023 PROTEST, continued]

2. Inclusion of irrelevant language at the bottom of each page.

CRS 31-11-106 (2) reads: "Each petition section shall designate by name and mailing address two persons who shall represent the proponents thereof in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed."

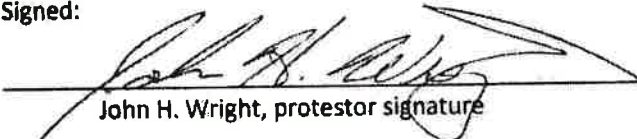
The petition complies with this requirement by giving the names and addresses of the petition representatives at the bottom (footer) of each page. However, it does so amid an abundance of verbiage that makes no sense.

Had the footer read: "Representatives of this petition are..." and then identified the names and addresses of those representatives, the requirement would have been simply met. The added language, comprising 77 words altogether, in the footer between those two elements is therefore **extraneous material**.

CRS 31-11-106 (5) declares: "Any petition section that fails to conform to the requirements of this article or that is circulated in a manner other than that permitted by this article shall be *invalid*."

Given the two cited examples of extraneous material appearing in the petition, the petition is invalid.

Signed:



John H. Wright, protestor signature

MAY 22 2023
Date

State of Colorado

County of San Juan

The foregoing signature by:

John H. Wright [Protestor name, printed]

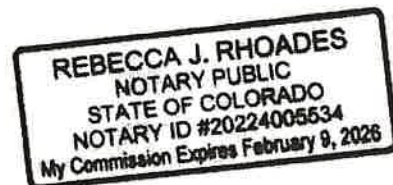
Witnessed by me this 22nd day of May, 2023 at Silverton, Colorado.

Signature of Notary Public: Rebecca J Rhoades

Name of Notary Public (printed): Rebecca J Rhoades

Notary Public, State of Colorado

My commission expires: Feb 9, 2026 Seal:



**3 ANCILLARY NOTES FOR PETITION PROTEST HEARING ON JUNE 1, 2023
IN REGARD TO
APRIL 14, 2023 OHV PETITION
John H. Wright**

NOTE 1

A piece appeared in the Silverton Standard [Thursday, April 6, 2023] titled: "What is happening with OHV Petition?"

Referring to CRS 31-11-106, the newspaper says: "It is the responsibility of the petitioner to follow the [statutory] article and compile the petition in a specific format per CRS (Colorado Revised Statutes) according to Town Hall." That's what the newspaper piece says.

But that's not right.

Where did that quote come from? Attributed to "Town Hall"???

Most likely it comes from a document titled: "Town of Silverton Initiative Petition Checklist." The document is undated, and un-ascribed as to authorship or office of origin. At one point the document claims, "It is the responsibility of the petition representatives to ensure that all necessary information and form requirements of the petition are met." That is seemingly the source for the newspaper's statement.

The checklist verbiage is not statutory language. Likely it was fabricated. A question may be asked: "by whom was it fabricated and when?"

NOTE 2

Earlier protest hearings on this evolving petition, and now this protest hearing, protest matters that are the clerk's responsibility to approve or reject petition drafts for validity prior to authorizing the petition for signature circulation.

The finding that the checklist verbiage somehow absolves the clerk from that responsibility is untenable. That the same clerk sits as this hearing officer is awkward to say the least, if not altogether inappropriate.

CRS 31-11-110(3) provides: "The clerk shall serve as hearing officer unless some other person is designated by the legislative body as the hearing officer..."

When matters of petition form or content, which the clerk is required to approve, are the subject of protest hearings, the clerk might recuse as hearing officer, and seek another to officiate.

NOTE 3

Asserting minimal importance to the extent of setting aside the protest has a high hurdle to overcome with the statutory language's frequent use of "shall". CRS 31-11 never says "the petition form *may...*" as opposed to "the petition form *shall...*" Compliance with the statute is simply required.

CRS 31-11-118(1) states: "Except as **otherwise provided** in this article, the clerk **shall** render all interpretations and **shall** make all initial decisions as to controversies or other matters arising in the operation of this article."

As for "Otherwise provided...": There are only two places in CRS 31-11 where the statute says "the clerk may...". Neither are relevant for these notes [*see especially: CRS 31-11-106(1) reference to Article 5, Section 1(9) of the state constitution*]. There is also the matter of allowing an alternate hearing officer per CRS 31-11-110(3) as "otherwise provided."

Nothing about CRS 31-11-118(1) gives a clerk discretion to allow an invalid petition to advance through the election process to a vote.

Nothing about CRS 31-11-118(1) permits a clerk to ignore clerk's responsibility for approving or rejecting petition form and content.

Nothing about CRS 31-11-118(1) permits a clerk to lay the entire burden for adhering to petition form and content on the petitioners before circulating the petition for signatures, meanwhile waiting to see if that action arouses a protest.

Asserting "minimal importance" as a basis for dismissing a protest would result in a protestor's **complaint** to the Secretary of the State of Colorado whose duties include overseeing elections.

(4)



Town of
Silverton

Matt Green
Town Clerk
mgreen@silverton.co.11

Jim Lokey, Petitioner
PO Box 346

Tommy Wipf, Petitioner
PO Box 588

John Wright, Protester
1872 CR 110

Subject: Post-hearing Determination of Petition - Sufficient

To all interested persons,

After having reviewed the Petition, the Protest documents, testimony of June 1, 2023, protest hearing, and Town Attorney Memorandum "OHV Petition and Protest" (attached), the Town of Silverton finds that the Petition substantially complies with the requirements of C.R.S. § 31-11-106 - Form of petition sections and is therefore sufficient.

Respectfully,

A handwritten signature in black ink, appearing to read 'Matt Green', is written over a horizontal line.

Matt Green, Town Clerk

By: Gloria Kaasch-Buerger, Town Administrator



CLAYTON M. BUCHNER
Town Attorney
Silverton, Colorado

MEMORANDUM FOR: Silverton Town Clerk

SUBJECT: OHV Petition and Protest

1. This memorandum is in reference to the sufficiency of the citizen-initiated referendum submitted April 14, 2023, proposing to amend Silverton's Municipal Code ("Code") to allow the use of Off-Highway Vehicles ("OHV") in Town ("Petition"). The proposed ballot question is, "*Shall a route be established to allow the use of Off-Highway Vehicles on streets in the Town of Silverton allowing for Off-Highway Vehicle access to businesses and trail-head access?*"

2. After reviewing the Petition, protest documents, and matters set forth in the protest hearing, it is my opinion that **the Petition substantially complies with the requirements of C.R.S. § 31-11-106 - Form of petition sections and is therefore sufficient.**

3. Background. The Petition was approved as to form by the Town Clerk and the requisite number of signatures were gathered by the Petitioners. A Protester submitted notice of protest and filed the same with the office of the clerk on May 22, 2023. The Town Clerk set the protest hearing for June 1, 2023, and received testimony from the Petitioners, Protester, and the public.

4. Protest. The Protester sets forth the grounds for protest asserting the Petition does not meet the requirements of C.R.S. § 31-11-106 and is therefore invalid as the Petition "contains at least two instances of extraneous material." The Protester properly cites the statute delineating the Petition must not contain "extraneous material" and asserts the following two matters as extraneous.

Assertion 1. Inclusion of the Ballot Title (identified as the "Ballot Question") in the petition section between the Summary of the Proposed Initiative and the Text of the Proposed Initiative...

Assertion 2. Inclusion of irrelevant language at the bottom of each page.

5. Definition. In order to analyze what constitutes "extraneous material" we must first understand the definition as it is applied in the context of ballot initiatives. Extraneous material is outside information, knowledge, or facts about the referendum or a party to the referendum considering the effect such information, knowledge or facts has on the partiality of the electors. This definition is applied in the below analysis.

6. Analysis of Assertion 1. Inclusion of the Ballot Title (identified as the "Ballot Question") is not extraneous material and should not invalidate the Petition. Colorado court decisions regarding the state initiative standard hold that substantial compliance is the appropriate standard to use when examining sufficiency of petitions. C.R.S. § 31-11-106(3)(b) states "A summary of the proposed initiative or ordinance that is the subject of a referendum petition shall be printed following the warning on each page of a petition section. The summary shall be true and impartial and shall not

be an argument, or likely to create prejudice, either for or against the measure. The summary shall be prepared by the clerk." The statute gives the clerk discretion in preparing the Summary, the clerk included the "Ballot Question" in the Summary, and the inclusion of the Ballot Question is impartial, not argumentative, and does not create prejudice for or against the measure.

7. Analysis of Assertion 2. The inclusion of the procedural language "Representatives of this petition are..." at the bottom of each page should not invalidate the Petition. Using the substantial compliance standard of review and applying the "extraneous material" definition, the language is not outside information, knowledge, or facts that would tend to prejudice the electors. The Protesters point that such information is "added language" to the requirement set forth in C.R.S. § 31-11-106 (2) is well taken, but "added language" does not per se constitute "extraneous" language without further consideration.

8. Conclusion. Upon consideration, the Petition substantially complies with C.R.S. § 31-11-106 - Form of petition sections, does not contain any extraneous material that would prejudice or otherwise affect the impartiality of an elector and should therefore be considered sufficient.

9. POC for this Memorandum is the undersigned at cbuchner@silverton.co.us.

Very Respectfully,



Clayton M. Buchner, J.D.
Town Attorney
Silverton, Colorado