

**BEFORE THE CITY CLERK
CITY OF LOVELAND, COLORADO**

DETERMINATION PURSUANT TO C.R.S SECTION 31-11-110

IN THE MATTER OF:

LARRY SARNER PROTEST TO PETITIONS FILED WITH LOVELAND CITY CLERK FOR A CITIZEN INITIATIVE TO ENACT AN ORDINANCE TO IMPOSE A TWO-YEAR MORATORIUM ON HYDRAULIC FRACTURING WITHIN THE CITY OF LOVELAND

I. INTRODUCTION

Under the authority granted me as the Loveland City Clerk under C.R.S. Section 31-11-110,¹ Loveland Municipal Charter Section 6-5,² and City Council Resolution #R-62-2013,³ a petition protest hearing was held before me in this matter on the morning of August 22, 2013, in the City of Loveland's City Council Chambers (the "Hearing"). Appearing before me in the Hearing were attorneys Jack Silver and Kent Holsinger on behalf of the protestor, Larry Sarnar, a Loveland resident and registered elector (the "Protestor"), and attorney Stanley T. Matsunaka on behalf of the proponent of the challenged citizen initiative, Protect Our Loveland, Inc., a nonprofit corporation (the "Proponent"). After having reviewed my office's file in this matter, the exhibits submitted into evidence at the Hearing, and having considered the witness testimony and arguments presented at the Hearing, I hereby issue, as required by C.R.S. § 31-11-110(3), this Determination setting forth my findings of fact and conclusions of law.

¹ City Charter Section 6-1 provides that all City elections shall be governed by the state statutes contained in the Colorado Municipal Election Code found in Article 11 of Title 31 of the Colorado Revised Statutes, except as otherwise provided by the City's Charter or by ordinance. (Attached as **Appendix A** is a certified copy of the City's Charter.) The City does not have in its Charter or ordinances any provisions that govern the issues addressed in this Determination except for the single-subject requirement for citizen initiatives found in City Charter §7-7 and the signature date requirement in Charter § 7-1(c), which requirements are addressed later in this Determination.

² Charter Section 6-5 provides that the City Clerk shall have charge of all activities and duties required by the Charter relating to the conduct of City elections and in a case where an election procedure is in doubt, the City Clerk is empowered to prescribe the procedure to be followed.

³ Resolution #R-62-2013 provides that the City Clerk "shall act as the City's designated local election official in all matters related to the November 5, 2013, regular municipal election."

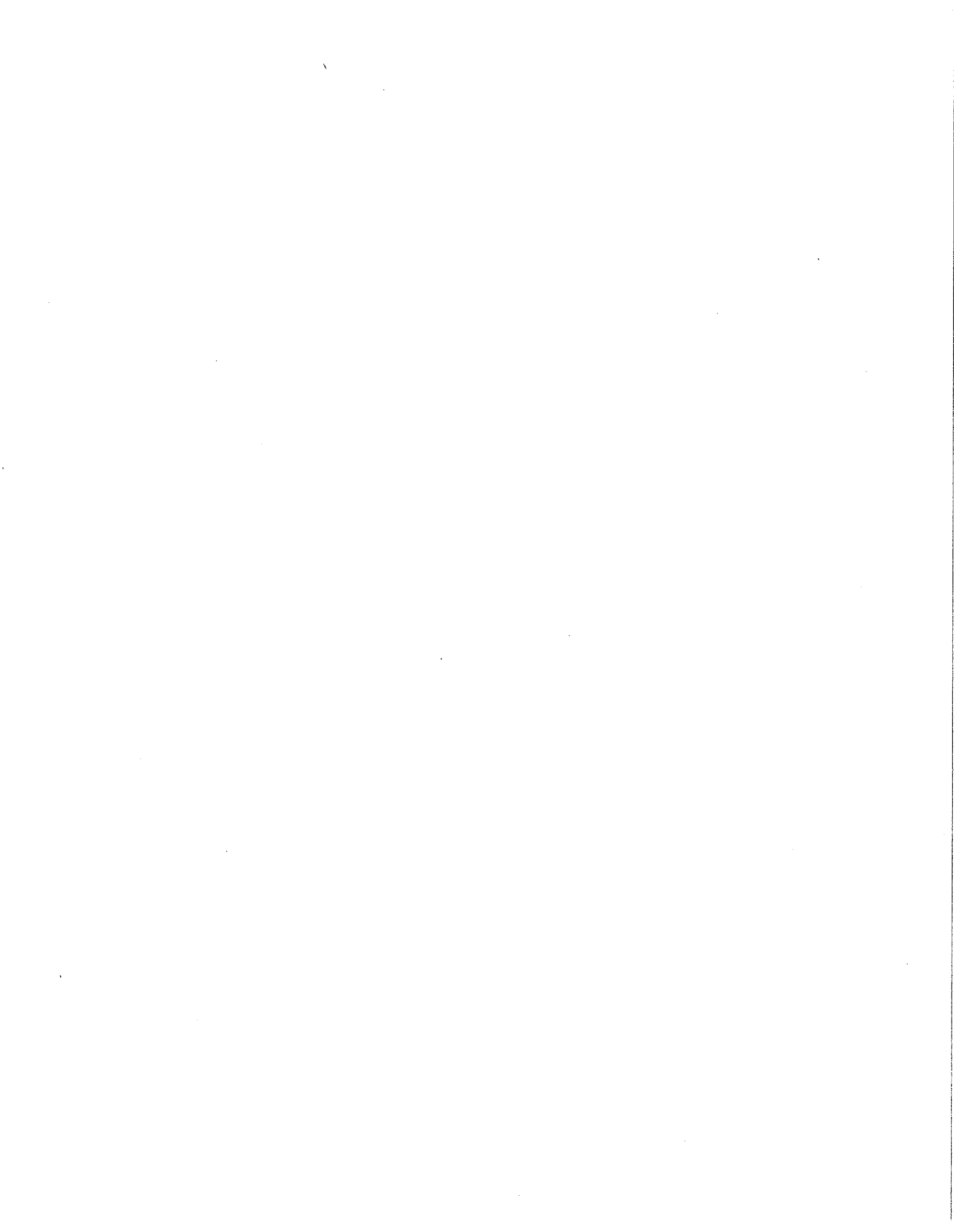


II. BACKGROUND

On May 21, 2013, Mr. Matsunaka filed with the Loveland City Clerk's Office his letter dated May 20, 2013, giving notice of the Proponent's intent to seek a ballot initiative to be submitted to the City's voters at the November 2013 election (the "May 21 Letter"). The initiative proposed in the May 21 Letter would have amended the City's Charter, if adopted, to impose a two-year moratorium on hydraulic fracturing to extract oil, gas and other hydrocarbons within Loveland pending the results of a study to determine the impacts of hydraulic fracturing on property values and human health. Mr. Matsunaka subsequently filed with the City Clerk's Office a second letter dated May 24, 2013 (the "May 24 Letter"), amending his May 21 Letter and giving notice that the proposed ballot initiative would, if adopted, enact an ordinance instead of a Charter amendment and that, in addition to the two-year moratorium on hydraulic fracturing, the ordinance would impose a two-year moratorium on the storage and disposal within the City of the waste products from hydraulic fracturing (the "Initiative"). The May 24 Letter also submitted the Proponent's proposed petition form.

After reviewing the Proponent's proposed petition form and as required by C.R.S. § 31-11-106(1), I mailed my letter dated June 3, 2013, to the Proponent's representatives, Sharon Carlisle and Judy Freeman (jointly, the "Proponent Representatives") and to Mr. Matsunaka notifying them that the form of the Proponent's submitted petition was approved (the "June 3 Letter"). The Proponent was also notified in the June 3 Letter that my office had received from the Larimer County Clerk and Recorder's Elections Department the number of Loveland's registered electors as of May 21, 2013, that number being 45,044 registered electors. The Proponent was accordingly advised in the June 3 Letter that under C.R.S. § 31-11-104(1) the minimum number of valid signatures required on the Proponent's petitions would be 5% of 45,044, or 2,253 signatures.⁴

⁴ The June 3 Letter actually stated that 2,523 signatures would be required but this was in error because of a transposition of numbers. In my July 1, 2013, letter to the Proponent Representatives and Mr. Matsunaka, this error was corrected to reflect that 2,223 would be the required number of signatures.



On July 8, 2013, the Proponent submitted to the City Clerk's Office over one hundred petition sections containing approximately 3,704 signatures. As required by C.R.S. § 31-11-109(1), I conducted my review of the Proponent's petitions. Then, in a letter dated July 23, 2013, mailed to the Proponent Representatives and to Mr. Matsunaka, I advised the Proponent, as required by C.R.S. § 31-11-109(2), that as of July 23, 2013, I had determined that the Proponent's petitions contained at least 2,256 valid signatures in petition sections 1 through 101 thereby exceeding the previously established requirement for 2,253 signatures (the "July 23 Letter"). I also advised the Proponent in the July 23 Letter that I would continue to review the Proponent's remaining petition sections for valid signatures. When my review of the remaining petition sections was completed, I determined that the Proponent's petitions contained a total of 2,743 valid signatures, 490 more signatures than the required 2,253 signatures.

Since the Proponent's petitions were filed on July 8, 2013, under C.R.S. § 31-11-110(1) any Loveland registered elector had until August 16, 2013 (within 40 days of July 8, 2013) in which to file with the City Clerk's Office a written protest to challenge the sufficiency of the Proponent's petitions. On August 16, 2013, the Protestor filed with the City Clerk's Office his "Protest Pursuant to C.R.S. § 31-11-110 to Protect Our Loveland's Petition in Support of a Ballot Measure Seeking an Ordinance Entitled: 'Loveland Public Health, Safety and Wellness Act,'" dated August 16, 2013, (the "Protest"). On August 16, 2013, I mailed to the Proponent Representatives and the Protestor and emailed to Mr. Silver, Mr. Holsinger and Mr. Matsunaka, the notice required by C.R.S. § 31-11-110(1) setting the date, time and place for the Hearing. The Hearing was held as noticed.

III. PROTESTOR'S OBJECTIONS

The Protestor raises in the Protest four "problems" with or objections to my statement of sufficiency of the Proponent's petitions as contained in the July 23 Letter and as later confirmed by my continued review of the petitions.



Two of these objections will be considered together as they can both be characterized as challenges to the substantive validity, merits and future application of the Initiative. The Protestor first objects that the ordinance proposed in the Initiative would, if adopted, impose the two-year moratorium retroactive to an uncertain date before the date of the ordinance's adoption and that this is not how the "democratic process is intended to work" and that "retroactive application is strongly disfavored by the law and may expose Loveland to litigation..." (Protest pg. 5). The Protestor's second objection is that the proposed ordinance "strays into an area of law meant to be governed by the State, not local governments" (Protest pg. 7). The Protestor complains that this will invite the State to sue Loveland causing the City to expend its limited resources on litigation.

The Protestor's third objection is that the proposed ordinance violates the City's single-subject rule in City Charter § 7-7. The Protestor argues that the ordinance "addresses a number of different, unrelated, and potentially incompatible subjects" and that "this will make it difficult for voters to determine what they are voting for or against" (Protest pg. 2).

Finally, the Protestor asserts in his Protest that he has identified as invalid 558 of the 2,743 signatures previously found to be valid from my review of the Proponent's petitions, resulting in only 2,185 valid signatures, 68 short of the 2,253 determined to be required in the July 23 Letter. The Protestor argues that these signatures are invalid for a number of reasons. This includes entire petitions being invalid because of defects in circulator affidavits and in the notarizations of those affidavits. It also includes various defects in individual signatures.

Related to the Protestor's claim of an insufficient number of valid signatures, he further asserts that the 2,253 signatures required in the July 23 Letter is in error because the Larimer County Clerk and Recorder's number of 45,044 registered voters in Loveland as of May 21, 2013, that was provided to the City Clerk's Office, failed to take into account certain inactive, but registered, voters that existed in Loveland on May 21, 2013. The Protestor contends that the correct number of Loveland's registered



voters on May 21, 2013, should be 48,441. As a result, the Protestor argues that 5% of this 48,441 number is 2,423 and so this should be the number of valid signatures required for the Proponent's petitions to be deemed sufficient. The Protestor therefore contends that the Proponent's petitions actually fall 238 valid signatures short of being sufficient.

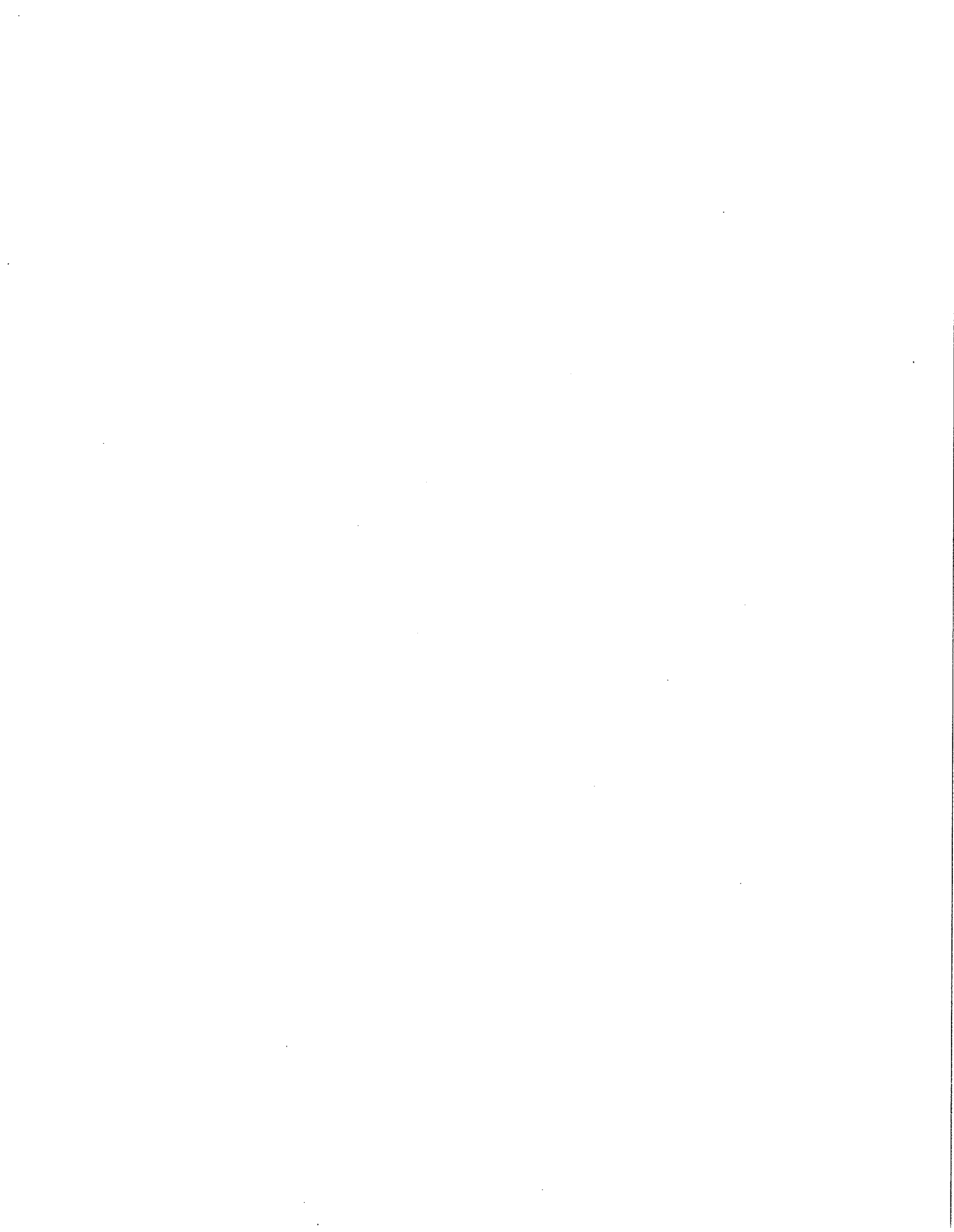
Each of these objections will be addressed in turn in the analysis that follows.

IV. ANALYSIS

A. Retroactivity and State-Law Preemption

The Protestor's objection to the Initiative's proposed ordinance on the basis that it will be retroactive to an uncertain date after the date the ordinance is adopted and his objection that the ordinance addresses a matter preempted by state law, both clearly go to the substance, merits and future application of the Initiative. The Colorado Supreme Court has consistently held when considering pre-election challenges to citizen initiatives under the State's initiative provisions in Article V, Section 1 of the Colorado Constitution and Title 1, Article 40 of the Colorado Revised Statute, and most recently in considering a petition protest to a municipality's citizen initiative under C.R.S. § 31-11-110, that the courts "may not interfere with the initiative process to address challenges to the substantive validity of an initiative before it is actually adopted."⁵ I therefore conclude that I am without the legal authority in a petition protest challenge under C.R.S. § 31-11-110 to determine that the Proponent's petitions are insufficient because the proposed ordinance may be legally problematic if adopted due to its retroactive effect or because it may be preempted by state law. These are issues for the courts to decide if the proposed ordinance is hereafter adopted by the Loveland City Council or Loveland's voters.

⁵ *Vagneur v. City of Aspen*, 295 P.3d 493, 503 (Colo. 2013). See also, *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45*, 274 P.3d 576, 579 (Colo. 2012) ("...our limited role in this process prohibits us from addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted"); *In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91*, 235 P.3d 1071, 1076 (Colo. 2010) ("We do not determine the initiative's efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal.").



B. Single-Subject Requirement

Loveland's citizens derive their initiative power to propose City ordinances relating to legislative matters from Article V, Section 1(9) of the Colorado Constitution and subsection (9) grants to Loveland and other municipalities the authority to determine the manner by which this initiative power will be exercised by their citizens.⁶ Subsection (9) does not impose a single-subject requirement on citizen initiatives for municipal legislation and neither does the Colorado Municipal Election Code in Article 11 of Title 31 of the Colorado Revised Statutes.⁷ A single-subject requirement is, however, imposed on citizen initiatives for state statutes and constitutional amendments in Section 1(5.5) of Article V of the Colorado Constitution. State law at C.R.S. § 1-40-106.5(1)(e)(I) describes the State's single-subject requirement as, in part, forbidding "the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection...."

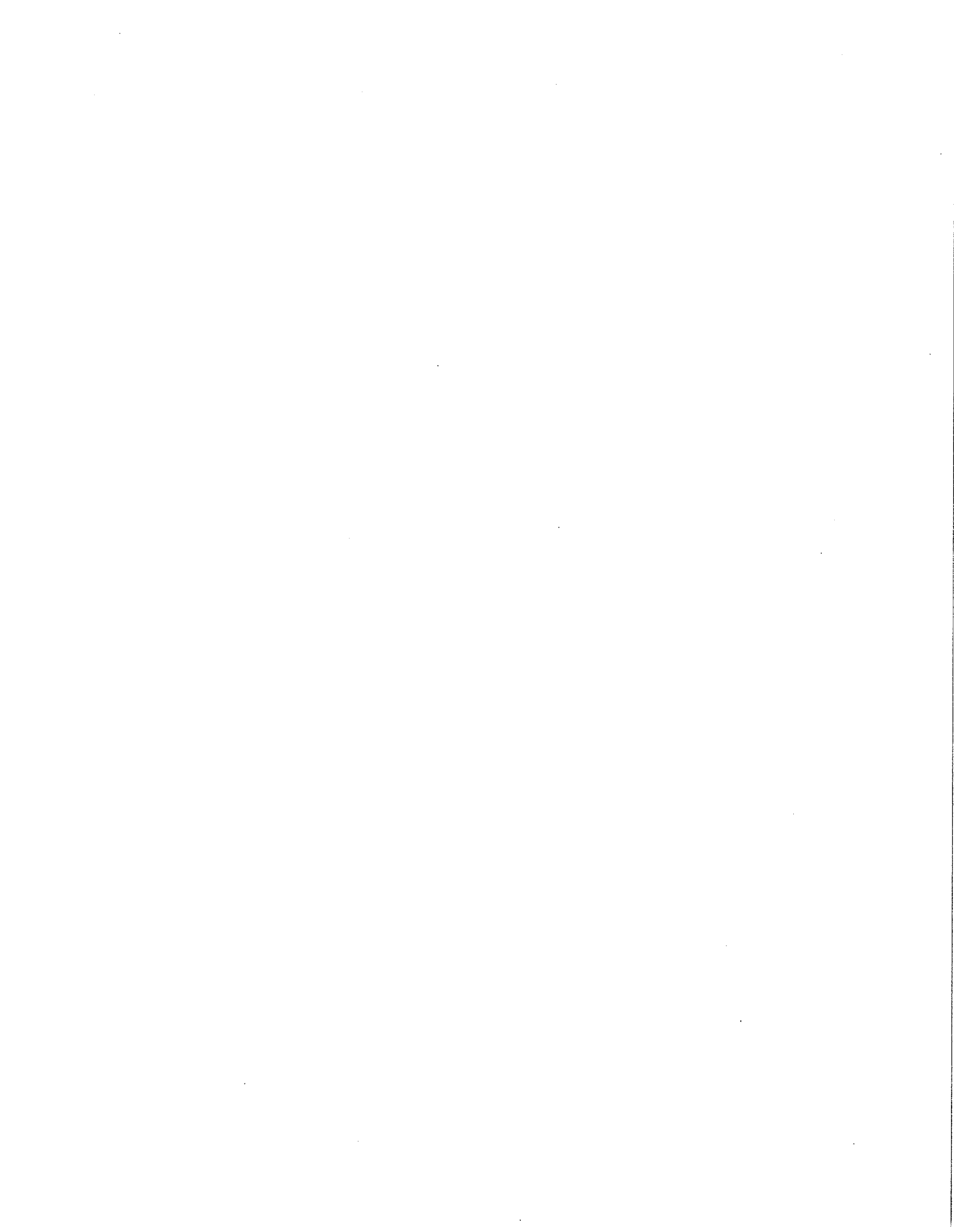
The City's single-subject requirement is found in Charter § 7-7 and requires that only initiative petitions proposing measures containing a single subject shall be approved by the City Clerk. Section 7-7 defines this single-subject requirement as meaning "that the matters in the measure submitted for voter approval are necessarily or properly connected and are not disconnected or incongruous."

Because the State's and the City's single-subject requirements are substantially similar, it is appropriate to rely on case law interpreting the State's single-subject requirement in analyzing the City's single-subject requirement as applied to the Initiative. This is exactly what the Colorado Court of Appeals did in *Bruce v. City of Colorado Springs*, 252 P.3d 30 (Colo. App. 2010). Colorado Springs' single-subject requirement, as found in its municipal code, reads: "[m]atters proposed for submission to the electorate must be necessarily or properly connected and not disconnected or incongruous."⁸ Loveland's and Colorado Springs' single-subject requirements are essentially identical. So the rules of construction

⁶ *Vagneur v. City of Aspen*, 295 P.2d at 504.

⁷ *Bruce v. City of Colorado Springs*, 200 P.3d 1140, 1144-45 (Colo. App. 2008).

⁸ 252 P.3d at 32.



and legal principles the Court of Appeals observed and relied on to analyze the Colorado Springs' citizen initiative under Colorado Spring's single-subject requirement are equally applicable and instructive to this matter. The Court of Appeals summarized these rules of construction and legal principles to be as follows:

An initiative violates the single subject requirement when it (1) relates to more than one subject and (2) has at least two distinct and separate purposes. [Cites omitted.] In contrast, if the initiative tends to achieve or to carry out one general object or purpose, it constitutes a single subject. [Cites omitted.]

The single subject requirement is intended to prevent two practices by initiative proponents. [Cite omitted.] First, it serves to ensure that each initiative depends upon its own merits for passage. [Cites omitted.] Second, the single subject requirement is intended to "prevent surreptitious measures...[so as] to prevent surprise and fraud from being practiced upon voters." [Cites omitted.] Section 1(5.5) "is intended to prevent voter surprise or uninformed voting caused by items concealed within a lengthy or complex proposal." [Cite omitted.] "It also discourages placing voters in the position of voting for some matter they do not support to enact that which they do support." [Cite omitted.]

In reviewing whether an initiative comports with the single subject requirement, courts should not address the merits or the future application of the proposed initiative. [Cites omitted.] However, courts must sufficiently examine the initiative to discern whether the prohibition against multiple subjects has been violated. [Cites omitted.] "An evaluation of whether the component parts of a proposed initiative are connected and are germane to one another, so as to comprise one subject, simply cannot be undertaken in a vacuum." [Cite omitted.] The single subject requirement must be construed liberally so as not to impose undue restrictions on the initiative process. *In re Title for 1997-1998 No. 74*, 962 P.2d 927, 929 (Colo. 1998) ("Multiple ideas might well be parsed from even the simplest proposal by applying ever more exacting levels of analytic abstraction until an initiative measure has been broken into pieces. Such analysis, however, is neither required by the single[] subject requirement nor compatible with the right to propose initiatives guaranteed by Colorado's constitution.")⁹

Applying these rules of construction and principles to the proposed ordinance in the Initiative, I conclude that it does satisfy the single-subject requirement in Charter § 7-7. My analysis in reaching this conclusion follows.

The proposed ordinance in the Proponent's petition is title the "Loveland Public Health and Safety and Wellness Act" (the "Ordinance"). The Ordinance consists of four separate sections.

⁹ 252 P.3d at 34-35.



Section 1 contains a one sentence statement of the purpose of the Ordinance and it can be simply paraphrased as being to protect property and the public's health safety and welfare by placing a two-year moratorium on hydraulic fracturing to study the impacts of this process on Loveland's citizens. It contains no operative provisions and is clearly intended as an aid to any future enforcement and interpretation of the Ordinance.

Section 2 lists five "findings" the "people of Loveland" would be making concerning hydraulic fracturing by adopting the Ordinance. The first finding is a statement about "certain inalienable rights" under the Colorado Constitution being conferred on Loveland's citizens. The second finding quotes from a provision of the Colorado Oil and Gas Act relating to the protection of the environment, wildlife resources, and the public health, safety and welfare. The third finding purports to describe the hydraulic fracturing process. The fourth finding simply states that the "people of Loveland seek to protect themselves from the harms associated with hydraulic fracturing" and describes some of those harms. The fifth finding observes that State representatives have said publicly that they will be conducting a "health impact assessment" regarding the risk of hydraulic fracturing. Like Section 1, Section 2 contains no operative provisions. Section 2 is clearly intended to set forth the typical findings found in other legislation as a basis and justification for the operative provisions of the measure.

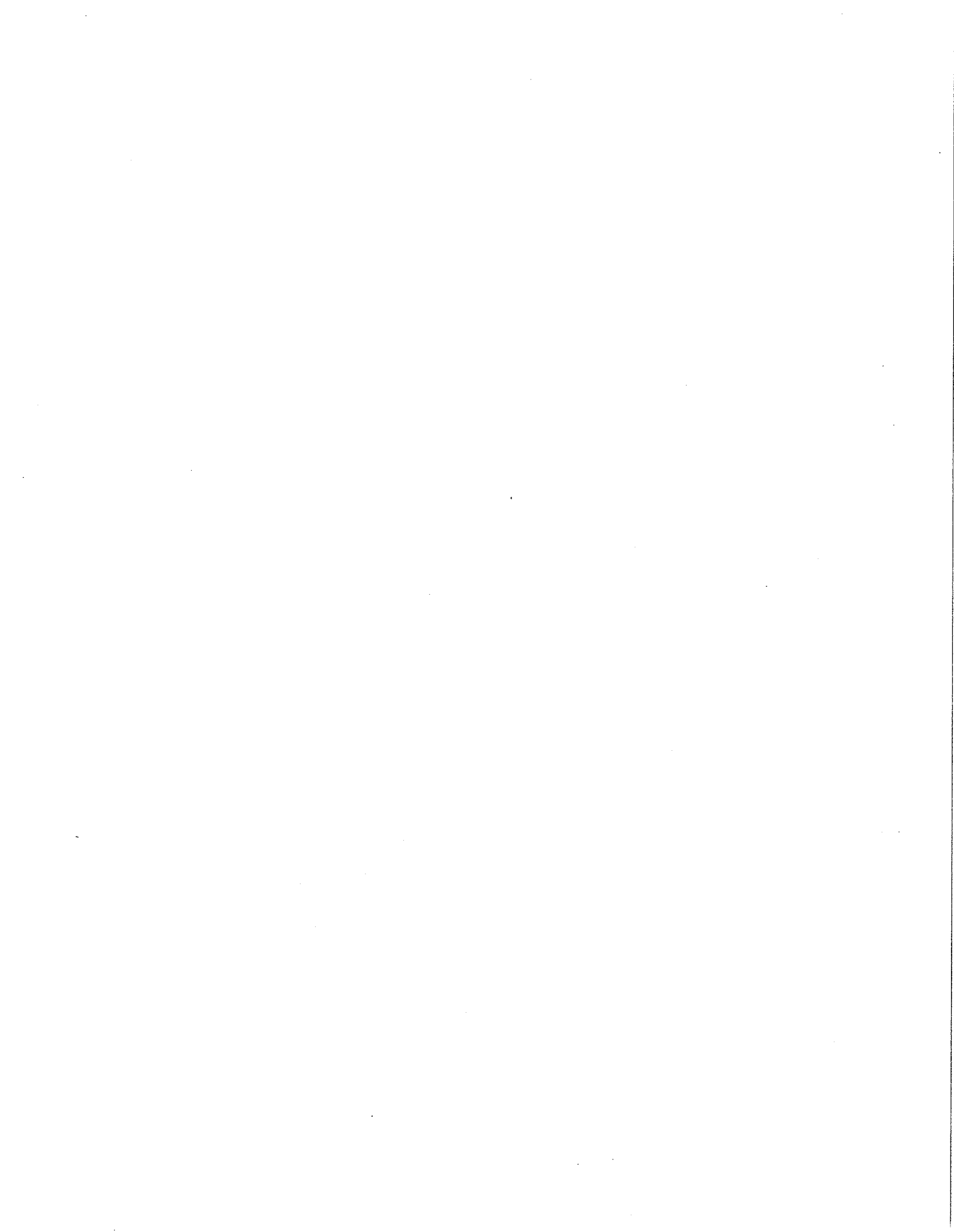
Section 3 is the main operative provision of the Ordinance. It arguably does four things. First, it imposes a two-year moratorium on hydraulic fracturing within Loveland. Second, it imposes a two-year moratorium on the storage and disposal within the City of the waste products from hydraulic fracturing. Third, it contemplates, without any detail as to how this will occur, that the two-year period will be used "to fully study the impacts of [hydraulic fracturing] on property values and human health." And fourth, it provides that the moratorium can be lifted by a ballot measure approved by Loveland's voters.

Finally, Section 4 provides that the Ordinance and its provisions will apply retroactively as of the date the Ordinance qualified for placement on the ballot.



It is clear that Sections 1 and 2 are necessarily and properly connected to the operative provisions of the Ordinance in Sections 3 and 4. Section 1 being the stated purpose of the Ordinance and Section 2 being the stated findings supporting and justifying the enactment of the Ordinance. Sections 1 and 2 are the types of provisions routinely included in state and local legislation. They are both certainly necessarily and properly connected to the Ordinance and do not include within them any distinct and separate subject different from the rest of the Ordinance.

Therefore, the key question presented in this analysis is whether the operative provisions in Sections 3 and 4 are necessarily and properly connected and not disconnected and incongruous. As already noted from the Court of Appeals decision in *Bruce v. City of Colorado Springs*, this involves determining whether the Ordinance relates to more than one subject and has at least two distinct and separate purposes or does it tend to achieve or to carry out one general object or purpose. Reaching this determination involves an evaluation of whether the component parts of the Ordinance are connected and are germane to one another so as to comprise one subject, but this is not to be done in a vacuum or in a manner where multiple purposes and objectives are parsed from a simple measure by applying ever more exacting levels of analytical abstraction until an initiative has been broken down into pieces. This analysis also involves taking into consideration whether the Ordinance implicates either of the two policy reasons recognized by the Courts for the single-subject requirement. The first is to ensure that each initiative depends on its own merits for passage by protecting voters from being placed in a position of voting for a matter in an initiative that they do not support in order to vote for a different matter in the initiative they do support. The second is to prevent surreptitious measures from causing surprise to the voters or fraud being practiced on them by concealing a subject within a lengthy and complex proposal. And in doing all this, the single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process.



The Ordinance is a relatively simple measure with little complexity. Nevertheless, the Protestor argues for a complex analysis and interpretation of the Ordinance calling for the finding of a multitude of subjects and purposes. This level of analysis is not required under the single-subject requirement in City Charter § 7-7.

Section 3 of the Ordinance would impose a two-year moratorium within the City on two activities, hydraulic fracturing and the storage and disposal of hydraulic fracturing waste products. It is reasonable and logical to assume that inherent in the activity of hydraulic fracturing are its resulting consequences and effects, which would necessarily include the storage and disposal of its waste products. The one general purpose of the Ordinance is clearly to place a two-year moratorium on hydraulic fracturing and its connected activities and consequences. The storage and disposal of its waste products is surely one of those connected activities or consequences of hydraulic fracturing. It is unlikely that Loveland's voters would favor a moratorium on hydraulic fracturing but not on the storage and disposal of its waste products, or vice versa. The clear purpose of the Ordinance is to impose a two-year moratorium on *all* activities related and connected to hydraulic fracturing. And since the Ordinance is not a lengthy or complex proposal, there is little likelihood that the voters will be surprised or have concealed from them the contents and purposes of the Ordinance.

The reference in Section 3 to use the two-year moratorium to fully study the impacts of hydraulic fracturing on property values and human health is just that, a reference. It does not require any specific study to be conducted by the City or by any other person or entity. It is a stretch to even consider this as a subject in the Ordinance, but even if it is, it has a direct connection to the main purpose of the moratorium which is to temporarily halt all activities within the City related to hydraulic fracturing until this process can be more fully studied.

The provision in Section 3 that the moratorium can be lifted by a ballot measure approved by Loveland's voters, is a procedural provision related to the future implementation of the Ordinance and is



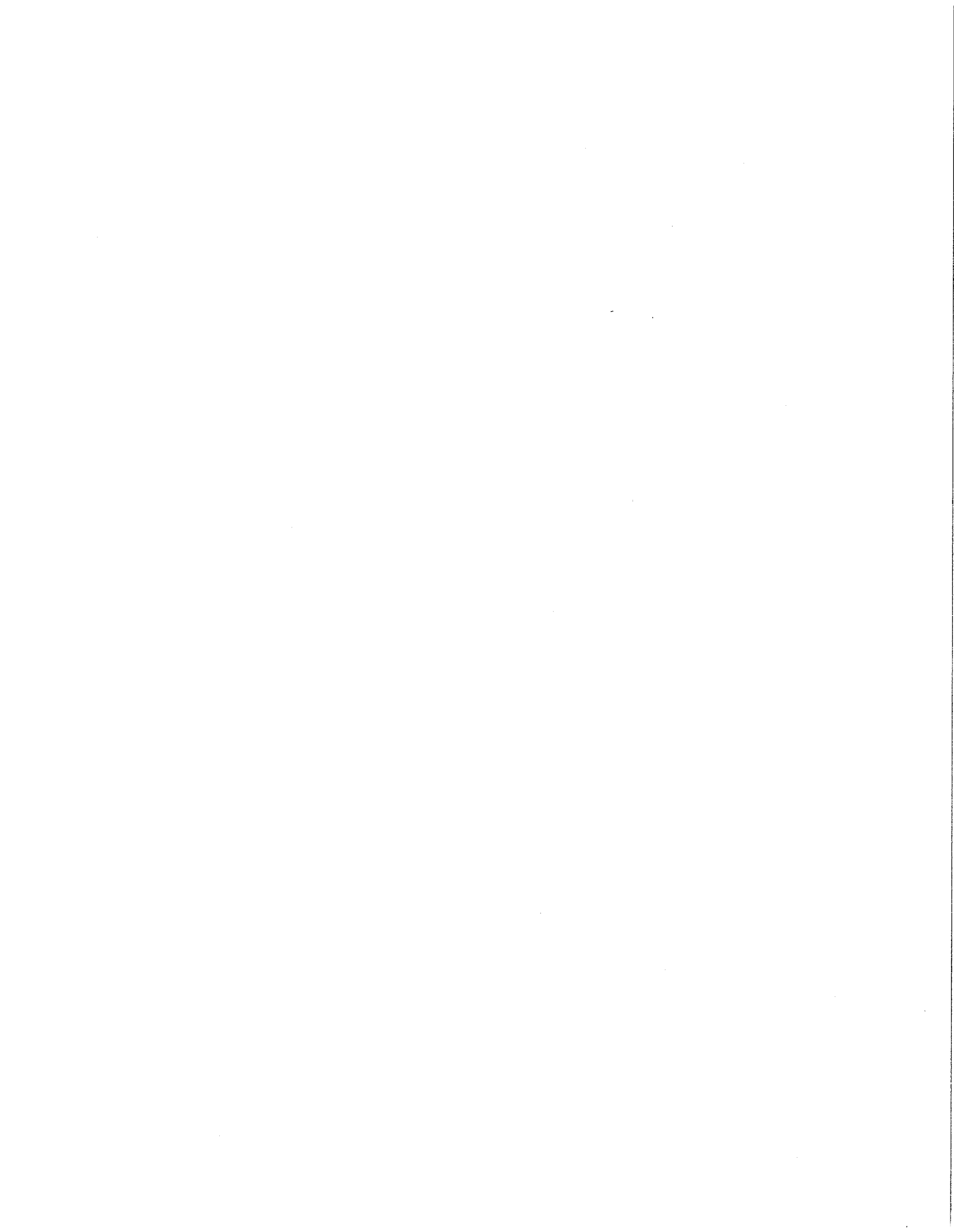
a statement of the obvious, rather than a distinct and separate subject unconnected to the moratorium. As this Determination discusses, Loveland's voters have the power of the initiative to change previous enactments, even those previously adopted by the voters. Similarly, the provision in Section 4 providing for a retroactive effective date is also a procedural provision related to the Ordinance's future implementation and is not a distinct and separate subject that is unconnected to or incongruous with the operative provisions of the Ordinance. If the effective date provision of a citizen-initiated legislative measure is considered a distinct and separate subject from the main subject of the measure, this would have the absurd effect of voters being limited to considering only those citizen initiatives that go into effect upon the date of adoption and not some other stated date, future or otherwise.

The Colorado Supreme Court recently considered in *In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45*, 274 P.3d 576 (Colo. 2012) a complex citizens initiative, especially as compared to the Ordinance, that would amend the Colorado Constitution in several respects to expand public control over all of the State's waters, which it would do in a number of ways and that included provisions related to the implementation of the initiative. In finding that the initiative and its several provision constituted a single subject that were "necessarily and properly related to the 'public control of waters,'"¹⁰ the Court observed that this included the provisions in the initiative outlining "how to implement and enforce" these new provisions.¹¹ In the same way, the provisions in Sections 3 and 4 relating to the implementation of the Ordinance are necessarily and properly connected to the moratorium.

In summary, I find and conclude, that as required by City Charter § 7-7, the Ordinance presents to the voters a single subject because all of the provisions of the Ordinance are necessarily and properly connected and not disconnected or incongruous.

¹⁰ 274 P.3d at 580.

¹¹ 274 P.3d at 581.



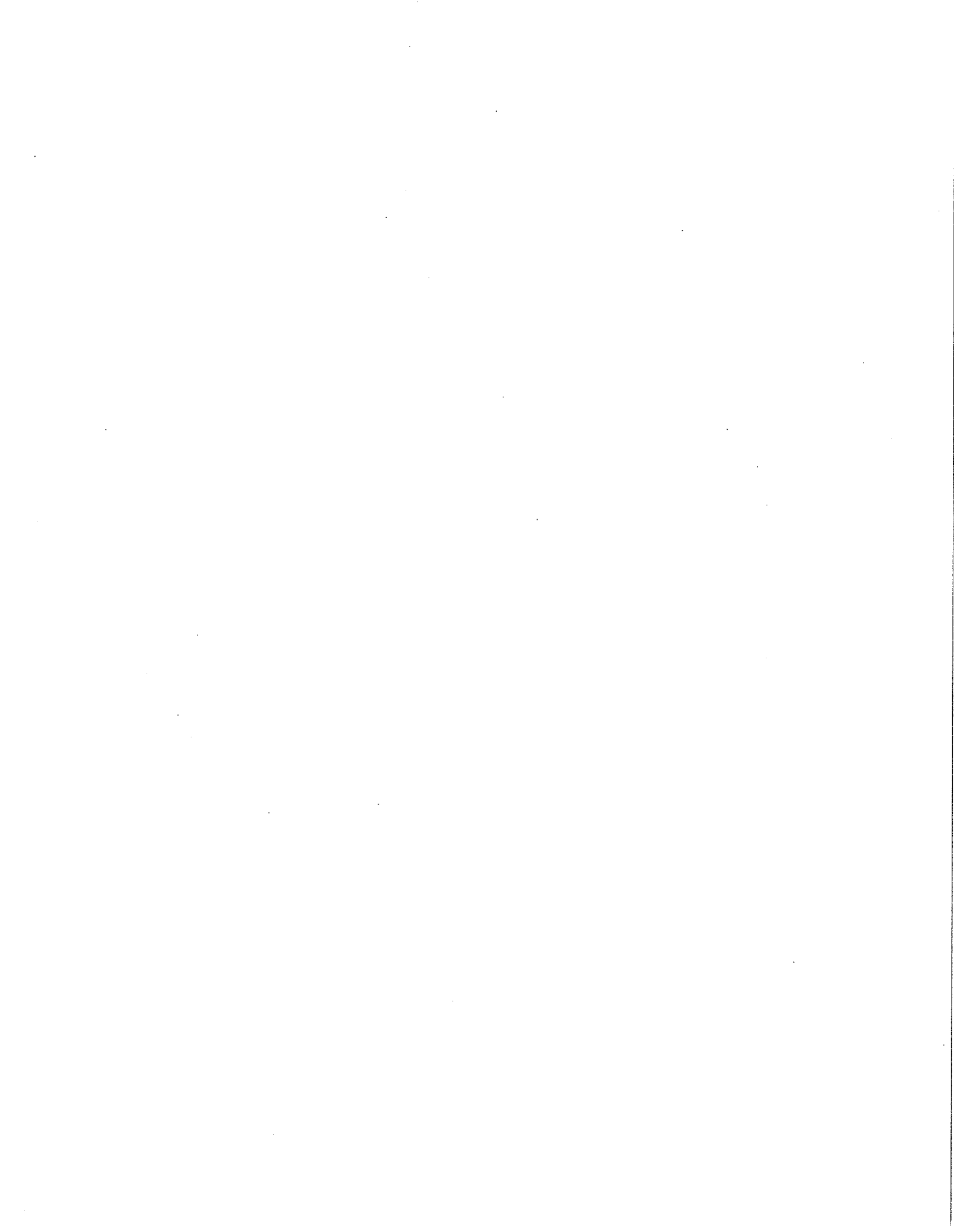
V. SUFFICIENCY OF PETITIONS AND SIGNATURES

Offered and admitted into evidence at the Hearing was Protestor's Exhibit 2, consisting of an exhibit summary (the "Exhibit 2 Summary") and subsections 2A through 2K. Each subsection contains copies of certain of the Proponent's petition sections that the Protestor is either challenging in their entirety for insufficiency or only with respect to the insufficiency of individual signatures within them. The Exhibit 2 Summary lists line-by-line for each such subsection the challenged signatures. Subsections 2A, 2B, 2C, 2D, 2E and 2F constitute challenges to entire petition sections on either the basis of defects in the circulator's affidavit or in the notarization of the circulator's signature, or both. Subsections 2G, 2H, 2I, 2J and 2K constitute challenges to specific signatures within the petition sections. Each subsection of Exhibit 2 will be analyzed separately.

In conducting this analysis of the Protestor's challenges to these petition sections and signatures, I am required to apply the "substantial compliance" standard used by the courts for evaluating the legal sufficiency of petitions and signatures submitted in the initiative process.¹² In evaluating whether a petition or a signature is in "substantial compliance," the Colorado Supreme Court has said the following must be considered: "(1) the extent of the noncompliance, (2) the purpose of the applicable provision and whether that purpose is substantially achieved despite the noncompliance, and (3) whether there was a good-faith effort to comply or whether noncompliance is based on a conscious decision to mislead the electorate."¹³ In addition, because the right of initiative is a fundamental right under the Colorado Constitution, state and local laws governing the initiative process are to be liberally construed so that this right reserved to the people is "facilitated and not hampered by either technical statutory provisions or

¹² *Fabec v. Beck*, 922 P.2d 330, 331 (Colo. 1996); *Loonan v. Woodley*, 882 P.2d 1380, 1384 (Colo. 1994); *Griff v. City of Grand Junction*, 262 P.3d 906, 911 (Colo. App. 2010) (substantial compliance standard applied to a protest under C.R.S. § 31-11-110 to the sufficiency of petitions submitted to the city clerk for a municipality's citizen initiative).

¹³ *Fabec v. Beck*, 922 P.2d at 341.



technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.”¹⁴

A. Subsection 2A

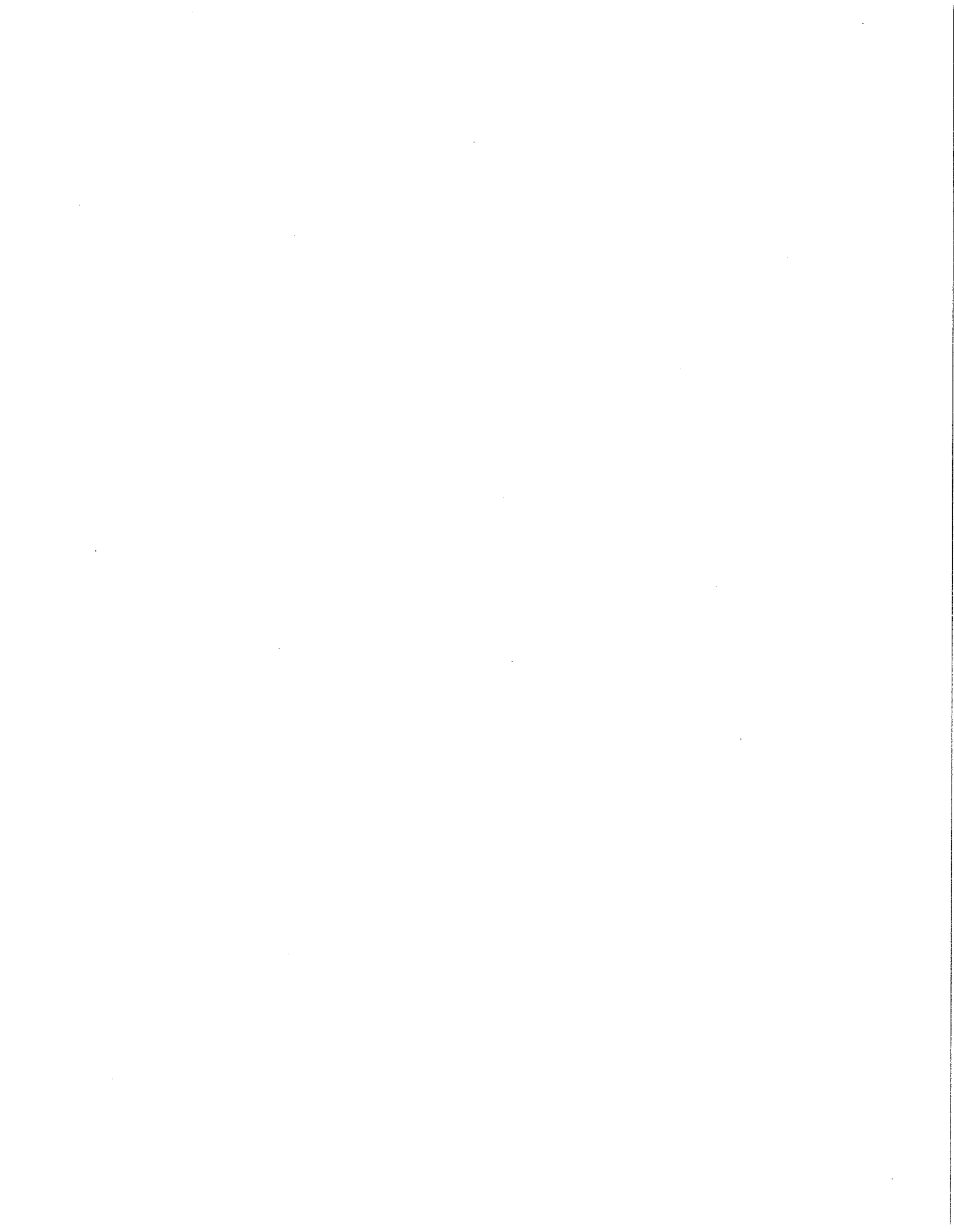
Subsection 2A consists of petition sections 21, 79 and 80 (the “2A Petitions”). The Exhibit 2 Summary identifies the 87 signatures in the 2A Petitions that the Protestor challenges. The Protestor challenges each of the 2A Petitions on the basis that the dates of their circulator affidavits are different from the dates of the notarizations of the circulators’ signatures. In petition section 21 the affidavit is dated June 21, while the notary certificate is dated June 20; in petition section 79 the affidavit is dated July 3, while the notary certificate is dated July 7; and in petition section 80 the affidavit is dated June 13, while the notary certificate is dated June 14.

C.R.S. § 31-11-106(3)(e)(I) requires that each petition section shall have attached to it a signed, *notarized* and dated circulator’s affidavit. In applying this same requirement to the State’s initiatives, as found in C.R.S. § 1-40-111(2), the Supreme Court employed the substantial compliance standard in deciding that a discrepancy between the circulator’s date of signing and the date of the notary certificate renders the defective petition “invalid absent evidence that explains the differences in question” since such petitions “do not provide the necessary safeguards against abuse and fraud in the initiative process.”¹⁵ The Proponent offered no evidence at the Hearing to explain these date differences in the 2A Petitions. I therefore find that all of the challenged signatures in the 2A Petitions as listed in the Exhibit 2 Summary, totaling 87 signatures, are invalid and will not be counted for determining the sufficiency of the Proponent’s petitions.

B. Subsection B

Subsection B consists of petition sections 28, 34, 37, 65, 86, 91, 107, 117, 127 and 130 (the “2B Petitions”). The Exhibit 2 Summary identifies the 220 signatures the Protestor is challenging in the 2B

¹⁴ 922 P.2d at 341.



Petitions. The Protestor challenges all of the 2B Petitions on the basis that the notary provision in each of them inserts the name of the notary in the notary certificate as being the person whose signature is being notarized rather than inserting the name of the affiant circulator, which is clearly intended to be the case in the notary certificates in each of the 2B Petitions. Except for the general notarization requirement in § 31-11-106(3)(e)(I), the Protestor does not cite any statute or other legal authority as a basis on which the 2B Petition should be considered insufficient because of this discrepancy. While § 31-11-106(3)(e)(I) certainly requires the circulator's signature to be notarized, it does not specify any requirements for that notary. However, the courts have looked to the Notaries Public Act in Part 1 of Article 55 of Title 12 of the Colorado Revised Statutes to determine whether an initiative petition should be invalidated due to a defect in the notarization of the circulator's affidavit.¹⁶

C.R.S. § 12-55-119(1) sets forth the manner in which affirmations, such as the circulator's affidavit, are required to be taken by a notary and it reads in full:

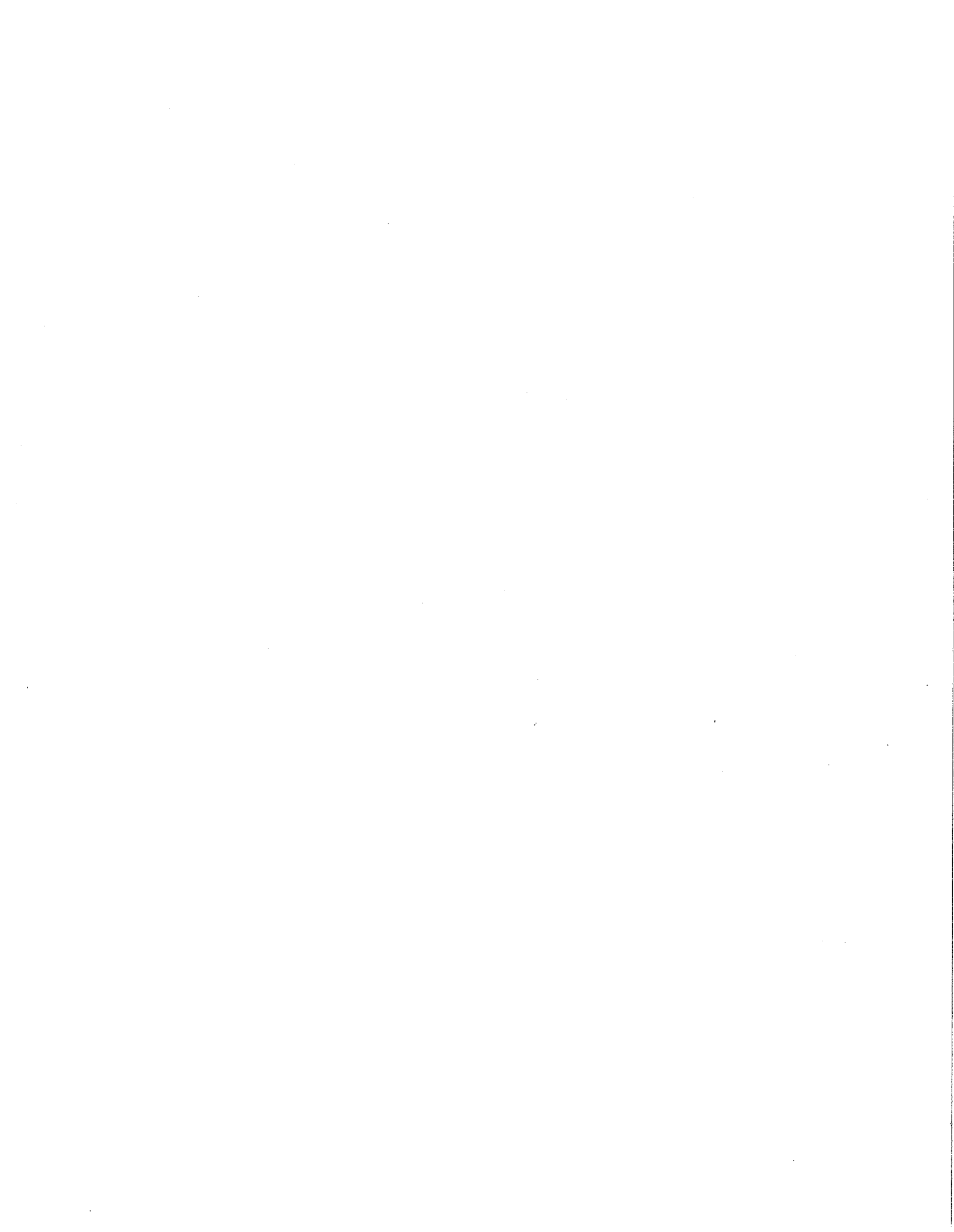
(1) If an affirmation is to be administered by the notary public in writing, the person taking the affirmation shall sign his name thereto, and the notary public shall write or print under the text of the affirmation the fact that the document has been subscribed and affirmed, or sworn to before me in the county of _____, state of Colorado, this ____ day of _____, 20__.

(official signature, seal, and commission expiration date of notary) .

Most notable in this provision is that a notary is not required to include in the written subscribed-and-sworn text that the notary signs, the name of the person taking and signing the affirmation, which in this matter would be the petition circulator's name. Therefore, the notary's insertion of their own names and not that of the circulators in the 2B Petitions does not appear to be in noncompliance with the applicable statutory requirements of §§ 31-11-106(3)(e)(I) and 12-55-119(1).

Despite the obvious mistake these notaries have made in inserting their own names in the notary certificates, this mistake does not invalidate the 2B Petitions under the substantial compliance standard.

¹⁵ 922 P.2d at 342.



First, as already found, it is questionable that this mistake even represents noncompliance with the requirements of the City's initiative process because there does not appear to be any statutory requirement that the circulator's name be in the notary certificate for an affirmation. Also, in each of the 2B Petitions the notary has otherwise signed, properly dated, and affixed his or her seal with all its required information, which is all that is required in § 12-55-119(1) to be in the notary certificate. Finally, no evidence was presented at the Hearing to even suggest that the notaries in making this mistake were not making a good-faith effort to comply with their notarial responsibilities or that they included their own name on the notary certificate as a conscious decision to mislead the electorate.

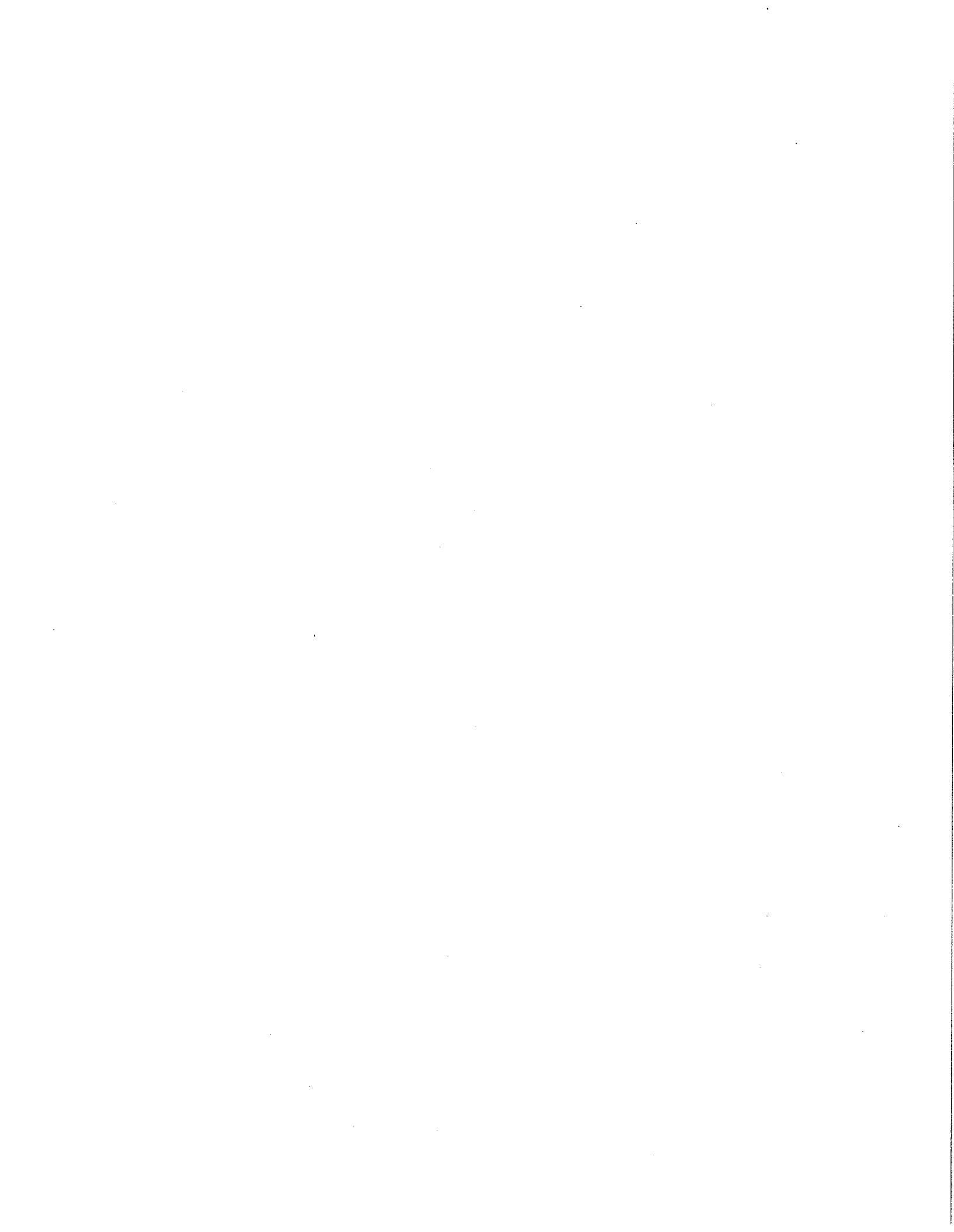
I therefore find that the 2B Petitions are in substantial compliance with the applicable requirements of the City's initiative process and of State law and that all of the 220 signatures listed in the Exhibit 2 Summary as being challenged in the 2B Petitions shall continue to be counted as valid signatures under my previous statement of sufficiency in the July 23 Letter.

C. Subsection 2C

Subsection 2C consists of only petition section 121, which has only two signatures, one of which I previously determined to be invalid. Therefore, only one signature is being challenged by the Protestor in petition section 121 as indicated in the Exhibit 2 Summary.

The Protestor is challenging this signature on the basis that in the notary certificate of the petition section, which is dated July 5, 2013, the notary has handwritten an expired commission date of May 2, 2013, on the notary certificate. However, the notary properly affixed her stamp to the notary certificate and it reflects a commission expiration date of May 2, 2017. While this raises a concern about the validity of this notary certificate, the question is whether this is in noncompliance with any statutory requirement in the City's initiative process.

¹⁶ *Fabec v. Beck*, 922 P.2d at 344; *Griff v. City of Grand Junction*, 262 P.2d at 909.



C.R.S. § 12-55-112(1)(2) sets out what is specifically required to be included on a notary certificate. This includes that the notary sign the certificate and affix under or near the notary's signature the notary seal containing the notary's printed name, notary identification number, the notary's commission expiration date, the words "State of Colorado," and the words "Notary Public." All of this is included in the notary's seal that is stamped near the notary's signature in petition section 121, including her unexpired commission date of May 2, 2017. Nothing in § 12-55-112 or in the affirmation requirements of § 12-55-119(1) requires that the notary's commission expiration date be handwritten on the notary certificate.

I therefore find that petition section 121 is in substantial compliance with the requirements of the City's initiative process and that the signature challenged in it, as reflected in the Exhibit 2 Summary, is a valid signature and shall continue to be counted in the number of valid signatures as determined in the July 23 Letter.

D. Subsection 2D

Subsection 2D consists of petition sections 41 and 92 (the "2D Petitions"). The Exhibit 2 Summary identifies 85 signatures that the Protestor is challenging in the 2D Petitions. The Protestor challenges the 2D Petitions on the basis that their notary seals, while stamped right above the circulator's affidavit with the notary certificate immediately below that affidavit on the same page, the notary seals are not stamped "under or near" the notaries' signatures as required in § 12-55-112(2).

The courts warn against invalidating petition signatures "in a technical way that may hamper the people's right to put certain issues to a popular vote."¹⁷ To accept the Protestor's challenge on this point would require a highly technical interpretation of § 12-55-112(2) by giving the word "near" a very constricted meaning. If a notary seal is stamped somewhere on the same 8½" x 11" page as the notary certificate and the notary's signature, is this not sufficient? Or does it need to be within one inch, two

¹⁷ *Griff v. City of Grand Junction*, 262 P.3d at 911.



inches or three inches of the notary's signature? While the courts recognize that sometimes there is the need for a technical interpretation and construction of an initiative process requirement, this is called for only to the extent necessary to guard against fraud or mistake in the people's exercise of their fundamental right of initiative.¹⁸ In the case of the 2D Petitions, there is nothing on the face of their affidavits and notary certificates to suggest the existence of fraud or mistake and the Protestor presented no evidence of any fraud or mistake at the Hearing related to location of the stamped notary seals on the 2D Petitions.

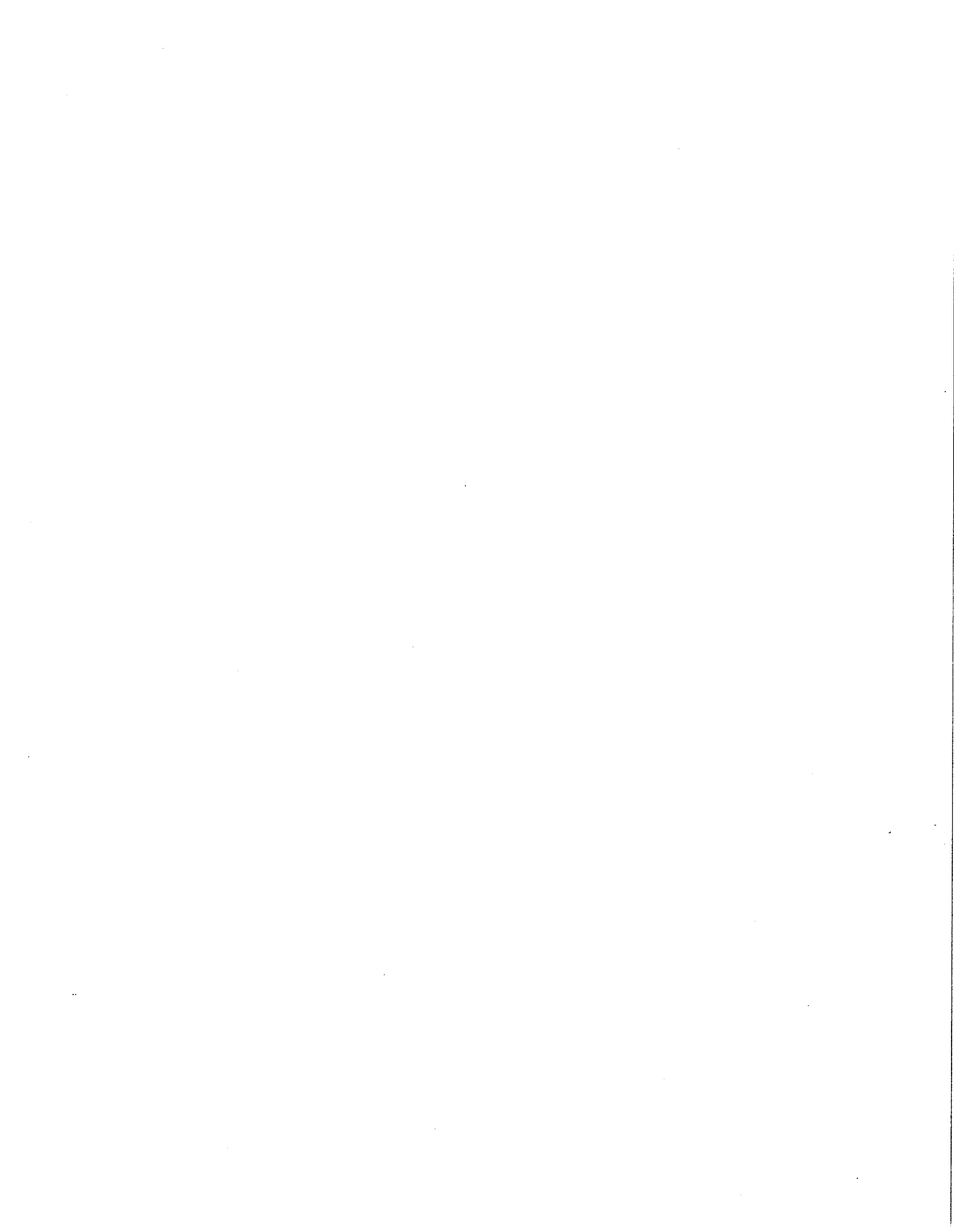
I therefore find that the 2D Petitions are in substantial compliance with the applicable requirements of the City's initiative process and the 85 challenged signatures in them, as identified in the Exhibit 2 Summary, shall continue to be considered valid and counted as previously decided in the July 23 Letter.

E. Subsection 2E

Subsection 2E consists of petition sections 25, 128 and 133 (the "2E Petitions"). The Exhibit 2 Summary identifies 103 signatures that the Protestor is challenging in the 2E Petitions. The Protestor challenges the 2E Petitions and these signatures on the basis that the notary seal stamped on the notary certificates of the circulators' affidavits in each of the 2E Petitions do not meet the requirements of § 12-55-112(2)(b) because these seals do not include the notary's identification number, and in the case of the affidavits in petition sections 128 and 133, the notary seal does not include the notary's commission expiration date.

These omissions in the notary seals likely occurred because in 2012 § 12-55-112(2) was amended to require that the notary seal include the notary's identification number and commission expiration date. However, in 2012 subsection (2.5) was also added to § 12-55-112 to allow notaries who obtained their seals before August 8, 2012, to continue to use those seals until renewal of their notary commissions even if those seals did not meet the new requirements of § 12-55-112(2). Pursuant to C.R.S. § 12-55-103, the

¹⁸ 922 P.2d at 341.



term for a commission is four years, so under § 12-55-108 notaries must seek reappointment every four years.

The particular problem with the notary seals in the 2E Petitions is that based on their notary commission expiration dates, August 29, 2016, in petition section 25 and June 5, 2017, in petition sections 128 and 133, it appears that these notaries obtained their commissions *after* August 8, 2012. Therefore, their notary seals are required to meet the new requirements of § 12-55-112(2) to include the notary identification number and the commission expiration date.

As already indicated, the notary seal in petition section 25 does contain the commission expiration date. So, other than the omission of the notary identification number, the notary certificate in petition section 25 meets all of the applicable requirements in § 12-55-112. With regard to petition sections 128 and 133, they are notarized by the same notary and in each of them her notary seal omits both the identification number and the commission expiration date, although the notary has handwritten her commission expiration date on both petition sections. Other than these two omissions, the notary certificates in these petition sections meet all of the other applicable requirements in § 12-55-112(2).

In considering these omissions in the 2E Petitions, I must decide whether they are significant enough to invalidate the 2E Petitions under the substantial compliance standard. The Supreme Court in *Fabec v. Beck*¹⁹ addressed a somewhat similar set of facts applying the substantial compliance standard. In *Fabec*, the notary certificates for the circulators' affidavits on some initiative petitions were not stamped with the notary seal, but were otherwise properly signed and completed by the notary. The Court also found that there was evidence in the record that the notaries who had omitted their notary seals on some of the petitions had used their seals properly on other submitted petitions so the record did reflect the notarial authority of those particular notaries. In its analysis, the Court first observed the requirement

¹⁹ 922 P.2d 330.



that a circulator's signature be authenticated by a notary is a justified requirement to protect the integrity of the initiative process. However, the Court then concluded:

“Although a notary seal lends assurance that an official is a notary public and therefore authorized to administer oaths, we hold that substantial compliance with the authentication requirement is achieved if the status of the official as a notary public is established by other evidence in the record. Our conclusion adequately protects the integrity of the initiative process and avoids invalidation of otherwise valid signatures to an initiative petition on a technical basis when an oath was in fact administered by the official duly authorized to do so.”²⁰

The Court then supported this conclusion by applying the three factors required to be considered under the substantial compliance standard, stating:

“First, nothing in the record suggests that the initiative proponents engaged in a bad-faith effort consciously to mislead the electorate by failing to secure the notary seal on a limited number of petitions. [Cite omitted.] Second, the failure to secure notary seals on initiative petitions was not extensive in this case. [Cite omitted.] Indeed, the district court held that only ninety-two signatures were invalid due to the lack of a notary seal on two of the circulator's affidavits.

Finally, the purpose of the “notarized” affidavit provision, § 1-40-11(2)..., was “substantially achieved,” [cite omitted], despite the proponents' failure to secure a notary seal on petitions affecting ninety-two signatures. The purpose of the “notarized” affidavit provision is to prevent mistake, fraud or abuse in the initiative process by requiring “that circulator signatures be authenticated by persons authorized to administer oaths.” [Cite omitted.] In this case, the district court relied on an admittedly “hypertechnical type of approach,” and required strict compliance with the seal requirement of § 12-55-112(2)...”²¹

The key difference between the facts in *Fabec* and those presented in this matter are that there is no evidence in the record created before me at the Hearing to confirm or explain the official status of the notaries who signed the notary certificates in the 2E Petitions. So, while I find that there is nothing in the record to suggest that the Proponent engaged in a bad-faith effort to mislead the electorate by the omission of the required notary seal on the 2E Petitions and that the extent of the noncompliance was arguably not significant, since it only affected 103 signatures, I nevertheless conclude that use of the defective notary seals on the 2E Petitions falls short of substantially achieving the purpose of the City's initiative

²⁰ 922 P.2d at 344.



requirement of properly notarized circulators' affidavits, that purpose being to prevent mistake, fraud or abuse in the initiative process. Had the Proponent presented evidence at the Hearing establishing the official status of these notaries, my decision would be different.

I therefore find that the 2E Petitions are not in substantial compliance with the applicable requirements of the City's initiative process and that the 103 signatures in the 2E Petitions listed as being challenged in the Exhibit 2 Summary are invalid and will not be counted for determining the sufficiency of the Proponent's petitions.

F. Subsection 2F

Subsection 2F consists of only petition section 32. The Protestor challenges 7 signatures in petition section 32 as described in the Exhibit 2 Summary. The basis for the Protestor's challenge is that the circulator's address stated in the circulator's affidavit does not include the circulator's municipal residence. C.R.S. § 31-11-106(3)(e)(I)(A) requires that the circulator's affidavit include, among other things: "[t]he affiant's printed name, the address at which the affiant resides, including the street name and number, *the municipality*, the county, and the date the affiant signed the affidavit..." (emphasis added). The circulator's affidavit in petition section 32 includes all of this, but does not include the municipality within which the circulator resides.

In my first review of the Proponent's petitions, I invalidated other petitions not in question in these proceedings on the basis that the circulator's affidavit failed to properly or fully state the circulator's address. As I did with invalidating those petition sections, I do so now with respect to petition section 32 on the basis that C.R.S. § 31-11-106(5) states: "[a]ny petition section that fails to conform to the requirements of this article...shall be invalid." § 31-11-106(3)(e)(I)(A) expressly requires that the circulator's affidavit "shall include" the circulator's municipality of residence.

²¹ 922 P.2d at 344-45.



The Supreme Court reached a similar conclusion in *Loonan v. Woodley*²² by invalidating state initiative petitions that did not include in the circulator's affidavit a statement required by state statute that the circulator "has read and understands the laws governing the circulation of petitions,"²³ a requirement applicable to municipal petitions under § 31-11-106(3)(e)(I)(B). In reaching its decision, the Court not only applied the substantial compliance standard, but also relied on a state statute, C.R.S. § 1-40-113(1), that is worded identically to C.R.S. § 31-11-106(5), which states that any petition that fails to conform to the applicable statutory requirements for state initiatives "shall be invalid."²⁴

I therefore find that petition section 32 is not in substantial compliance with the applicable requirements of the City's initiative process and that the 7 signatures challenged in petition section 32 as listed in the Exhibit 2 Summary are invalid and will not be counted for determining the sufficiency of the Proponent's petitions.

G. Subsection 2G

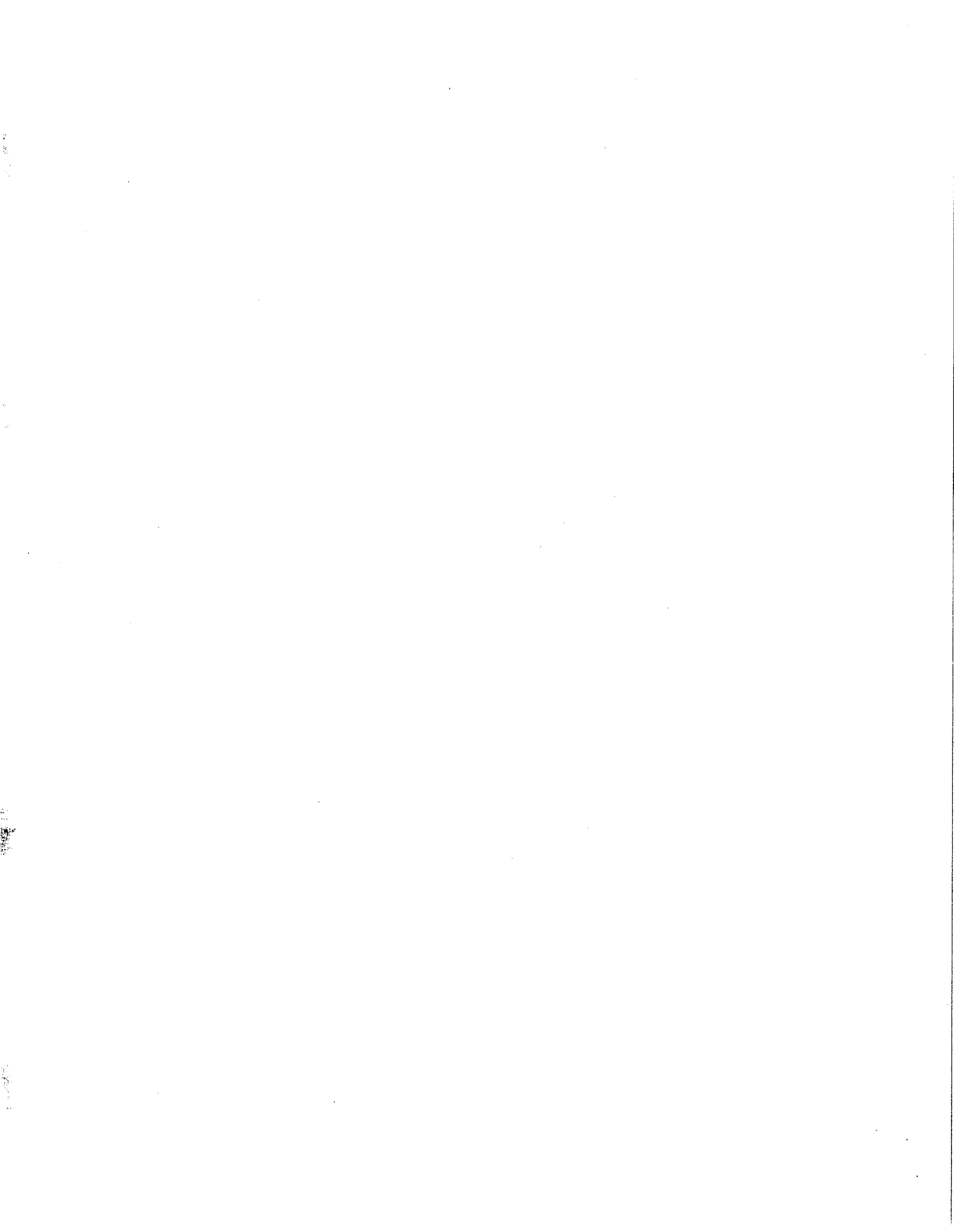
Subsection 2G is the first of the Exhibit 2 subsections challenging the sufficiency of individual signatures. The Exhibit 2 Summary identifies 16 signatures from various petition sections in subsection 2G that the Protestor alleges are insufficient because they are not in compliance with the signature requirements of C.R.S. § 31-11-108. The basis for the Protestor's challenge to these signatures is that the signators' names cannot be found or otherwise authenticated on the list of Loveland's registered electors provided by the Larimer County Clerk and Recorder in Protestor's Exhibit 17 (the "Registered Elector's List"). Under § 31-11-108, only Loveland's registered electors are qualified to sign the Proponent's petitions.

I have reviewed for a second time each of the signatures listed in the Exhibit 2 Summary that are being challenged in subsection 2G, and have also done so for the signatures challenged in subsections 2H,

²² 882 P.2d 1380.

²³ 882 P.2d at 1383.

²⁴ 882 P.2d at 1383.



2I, 2J and 2K later addressed in this Determination. I have applied the substantial compliance standard in my review of all of these signatures, including those in these subsequent subsections, and limited my determination to what can be authenticated and confirmed concerning these signatures to what can be found in the Registered Elector's List. While I have access to other State records which could potentially authenticate these signatures, I have not relied on these records in my review because these records are not part of the record in this proceeding.

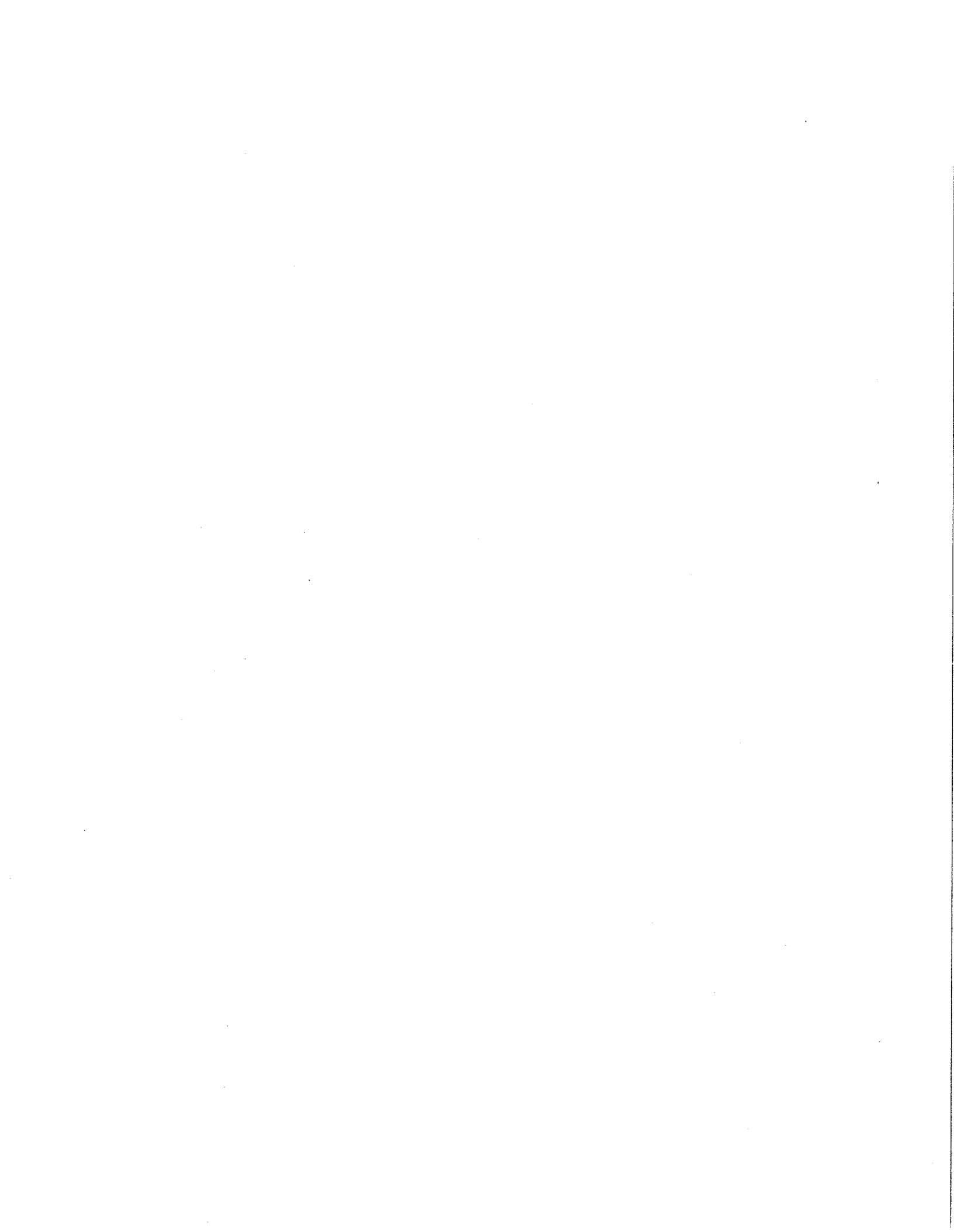
Based on my second review of the subsection 2G signatures and comparing them only to the information in the Registered Elector's List, I find the following 12 signatures to be invalid and not in substantial compliance with the applicable requirements of the City's initiative process: signature 14, petition section 23; signature 49, petition section 31; signatures 2 and 35, petition section 38; signature 14, petition section 40; signature 32, petition section 53; signature 31, petition section 57; signature 7, petition section 63; signature 96, petition section 4; signature 17, petition section 103; signature 7, petition section 109; and signature 8, petition section 116. Since these signatures are invalid, they will not be counted.

I find the following four signatures to be valid and in substantial compliance with the applicable requirements of the City's initiative process: signature 21, petition section 29; signatures 36 and 37, petition section 88; and signature 4, petition section 132. These four valid signatures will continue to be counted.

H. Subsection 2H

The Exhibit 2 Summary lists 32 signatures in subsection 2H from various petition sections that the Protestor challenges for sufficiency under § 31-11-108 on the basis that the elector's information on the petition is illegible or incomplete, or both.

Based on my review of these signatures and in referencing the Registered Elector's List, I find, with the exception of one signature, that all of the signatures challenged in subsection 2H are in substantial compliance with the applicable requirements of the City's initiative process.



The one signature I find not to be in substantial compliance, and therefore invalid, is signature 6 in petition section 14. The 31 valid signatures will, therefore, continue to be counted, but the invalid signature 6 in petition section 14 will not be counted.

I. Subsection 2I

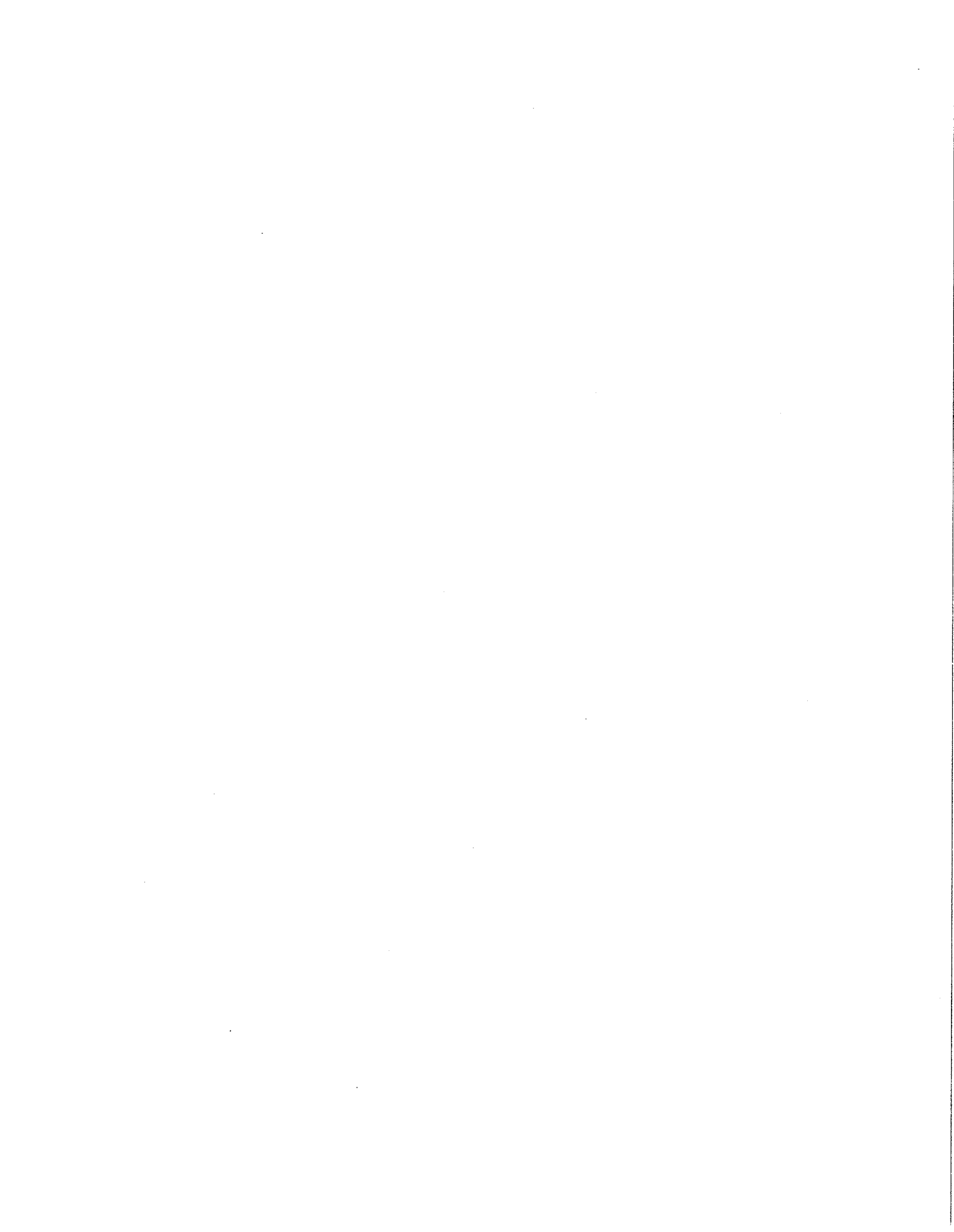
Only one signature is challenged in subsection 2I, signature 38 in petition section 88. The Protestor challenges this signature on the basis that it appears to be the signature of a disabled person who was provided assistance by another person in filling out his information on the petition. While disabled persons may seek assistance in filling out their information on an initiative petition, § 31-11-108 requires that the person providing this assistance “shall sign his or her name and address and shall state that such assistance was given to the disabled...elector.” The person who appears to be providing assistance to the signator signed her name and provided her address, but did not include on the petition her statement that she was providing the disabled elector with assistance to fill out his information. I therefore find that signature 38 in petition section 88 is not in substantial compliance with the applicable requirements of the City’s initiative process and is an invalid signature not to be counted.

J. Subsection 2J

The Exhibit 2 Summary lists two signatures being challenged in subsection 2J, signature 44 in petition section 9 and signature 3 in petition section 106. The Protestor challenges these signatures on the basis that they are duplicative of signatures found at signature 35 in petition section 9 and at signature 16 in petition section 25, respectively. C.R.S. § 31-11-114(1)(a) declares it unlawful for any person to knowingly sign his name more than once to a petition for the same initiative at one election. I find that these two signatures are duplicative and therefore invalid and should not be counted.

K. Subsection 2K

The Exhibit 2 Summary lists 11 signatures from various petition sections that the Protestor challenges in subsection 2K on the basis that the date of the elector’s signature is illegible, incomplete or a



date before June 3, 2013, the date I approved the form of the petition in my June 3 Letter. The Protestor contends that these signatures violate City Charter § 7-1(c), which reads: [t]he City Clerk shall not count as valid any signature on an initiative petition if the date of the signature is prior to the date the form of the petition was approved by the City Clerk.” I agree with the Protestor that all 11 of these dates for the electors’ signatures are either illegible, incomplete or clearly dated before June 3, 2013. I therefore find that these signatures are not in substantial compliance with the applicable requirements of the City’s initiative process, particularly Charter § 7-1(c). Consequently, all 11 signatures challenged in subsection 2K are invalid and will not be counted.

L. Required Number of Signatures

Related to the Protestor’s objections to the sufficiency of the Proponent’s petitions and signatures, the Protestor contends that the correct number of Loveland’s registered electors on May 21, 2013, should be 48,441 and not the 45,044 number that the Larimer County Clerk and Recorder previously provided to my office. The Protestor argues that the Proponent’s required number of petition signatures (being 5% of Loveland’s registered electors on May 21, 2013) is 2,423 signatures and not 2,253 signatures, the number of signatures the Proponent was advised were required in my July 23 Letter.

The Protestor’s contention for this higher number is based on his belief that a 2013 amendment to the Uniform Election Code of 1992 (C.R.S. § 1-1-101, et seq.) increased the number of Loveland’s registered electors that the Larimer County Clerk and Recorder should have counted on May 21, 2013. This amendment happened with the addition of C.R.S. § 1-2-229 which requires that all registered electors in the state that have been previously marked as “Inactive-failed to vote” shall, as of May 10, 2013, be considered an “active elector.”²⁵ The Protestor contends that the Larimer County Clerk and Recorder failed to take these inactive-failed-to-vote electors into account in determining the number of registered electors in Loveland as of May 21, 2013. The Protestor believes this number should be 48,441 because

²⁵ This statute was enacted in the Colorado General Assembly’s House Bill 13-1303.



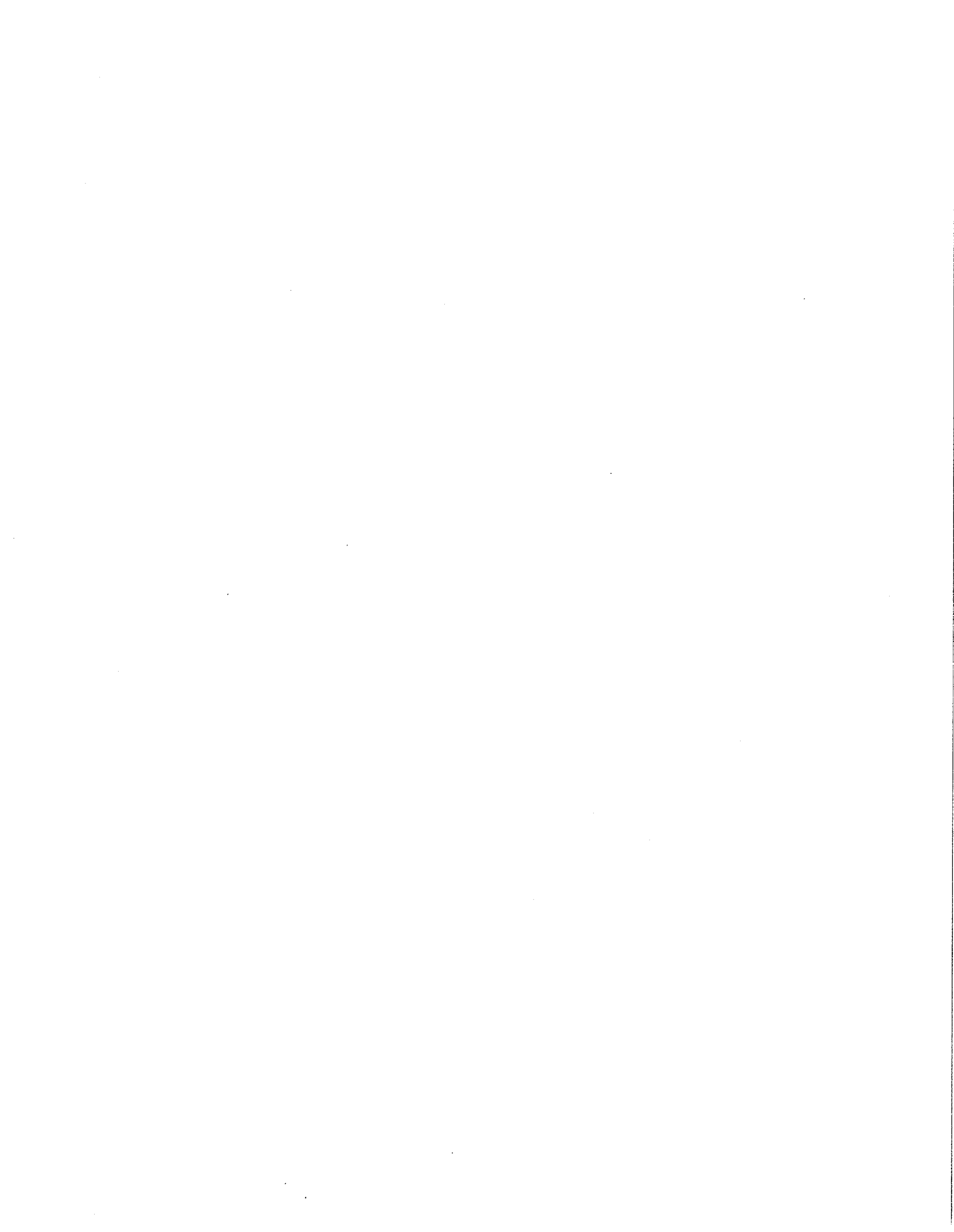
this was the Loveland registered elector count as of July 17, 2013, that he alleges to have received from the Larimer County Clerk and Recorder. The Protestor argues that an over 3,000 registered voter increase between May 21 and July 17, 2013, is evidence that the Larimer County Clerk and Recorder's May 21 number is inaccurate and low.

In support of his position, the Protestor called Michael Hagihara to testify at the Hearing. Mr. Hagihara identified himself as the Voter Registration Manager for the Colorado Secretary of State's Office. He testified that the relatively large difference between the May 21 number and the July 17 number was some evidence to him that this increase was due to the recent enactment of § 1-2-229. He further testified that this increase suggested to him that the Larimer County Clerk and Recorder's May 21 number did not count the inactive-failed-to-vote registered electors that existed in Loveland on May 21. However, he also testified that he did not believe anyone could determine what the accurate number should be for the number of Loveland registered electors as of May 21, 2013. He also admitted under cross-examination that the State's individual county clerk and recorders are the primary custodians and keepers of the records for the registered electors in their respective counties and not the Colorado Secretary of State's Office.

The courts have long recognized a presumption of validity and regularity with respect to the official acts of state and local officials in Colorado and, in the absence of clear evidence to the contrary, the courts will presume that these officials have properly discharged their official duties.²⁶

The Larimer County Clerk and Recorder's issuance of its 45,044 May 21 number to my office was clearly an official act that carries with it the presumption of validity, absent clear evidence to the contrary. I find that Mr. Hagihara's testimony, while very helpful to understanding this issue, falls short of clear evidence that the Larimer County Clerk and Recorder's 45,044 number is invalid.

²⁶ *Jensen v. City and County of Denver*, 806 P.2d 381, 386 (Colo. 1991).



I therefore conclude that 2,253 signatures (5% of 45,044) is the number of signatures required for petition sufficiency for this Initiative.

M. Calculation of Signatures

Based on the foregoing analysis I have found an additional 224 signatures to be invalid. Subtracting this number from the 2,743 signatures previously determined valid in the July 23 Letter, there remain 2,519 valid signatures in the petition sections the Proponent has submitted to the City Clerk's Office for the Initiative.

VI. CONCLUSION

For the reasons discussed above, I conclude that the Protestor has not made a sufficient showing for me to reverse my previous statement of sufficiency issued under C.R.S. § 31-11-104(2) to the Proponent in the July 23 Letter. I have no legal authority to do so based on the substance or merits of the Initiative and the Initiative satisfies the City's single-subject requirement in Charter § 7-7. With respect to the number of valid signatures in the Proponent's petitions, I have found that those petitions still contain 2,519 valid signatures, 266 more signatures than the required 2,253 signatures. In addition, this remaining number of valid signatures even exceeds by 96 signatures the 2,423 signature threshold argued by the Protestor.

I therefore conclude that the Initiative and its petitions have satisfied all of the applicable requirements in the City's initiative process to proceed forward under C.R.S. § 31-11-104(1) for the presentation of the Initiative's proposed ordinance to the City Council for its consideration for adoption or referral to the City's voters at a municipal election.

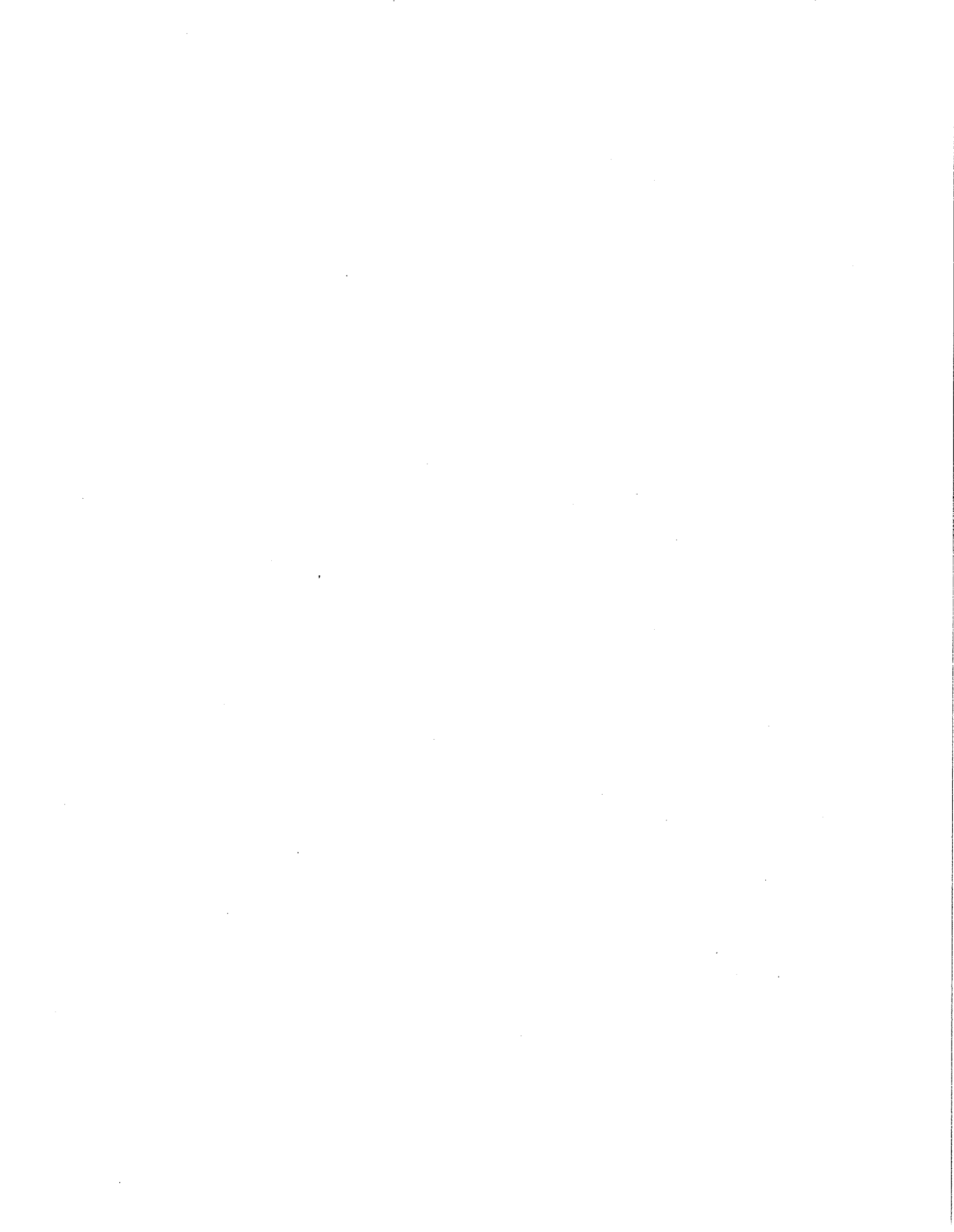
Dated this 27th day of August, 2013.

CITY CLERK
CITY OF LOVELAND, COLORADO

By:

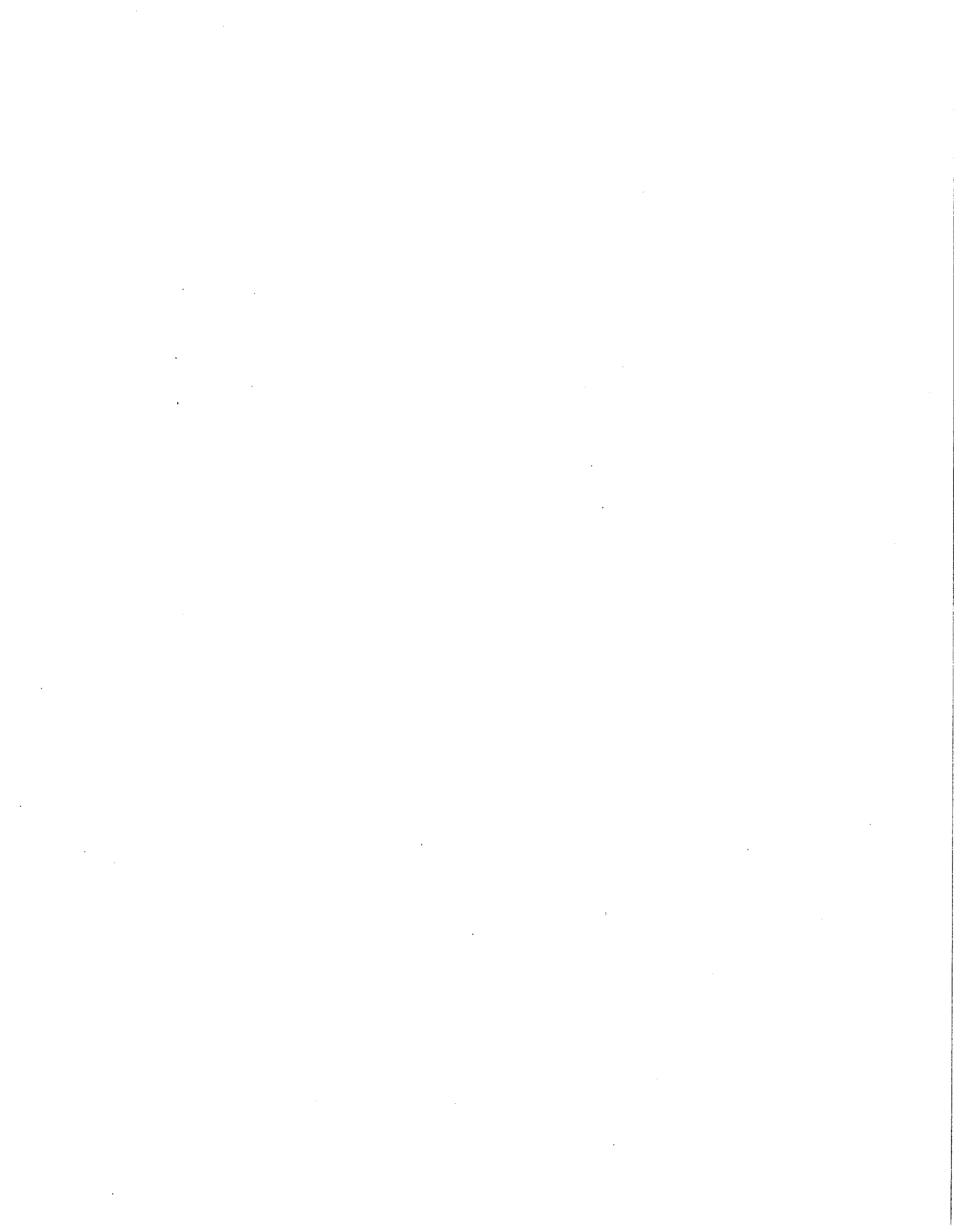


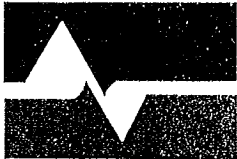
Teresa G. Andrews, Loveland City Clerk



APPENDIX A

**Certified copy of City of
Loveland's Charter**





City of Loveland

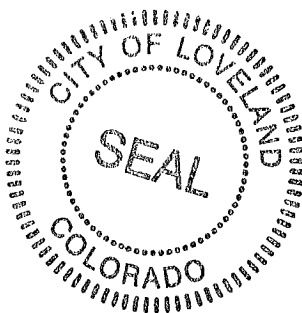
Office of the City Clerk

500 East Third Street, Suite 230 • Loveland, CO 80537
(970) 962-2000 • Fax (970) 962-2901 • TDD (970) 962-2620
www.cityofloveland.org

STATE OF COLORADO)
COUNTY OF LARIMER) ss
CITY OF LOVELAND.)

I, Jeannie M. Weaver, Deputy City Clerk of Loveland, Colorado, do hereby certify the attached to be a true and complete copy of "City of Loveland Charter" adopted by the Loveland City Council at their regular meeting on 5/21/96. I also certify that I am the keeper of the original document.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Loveland this 27th day of August, 2013.

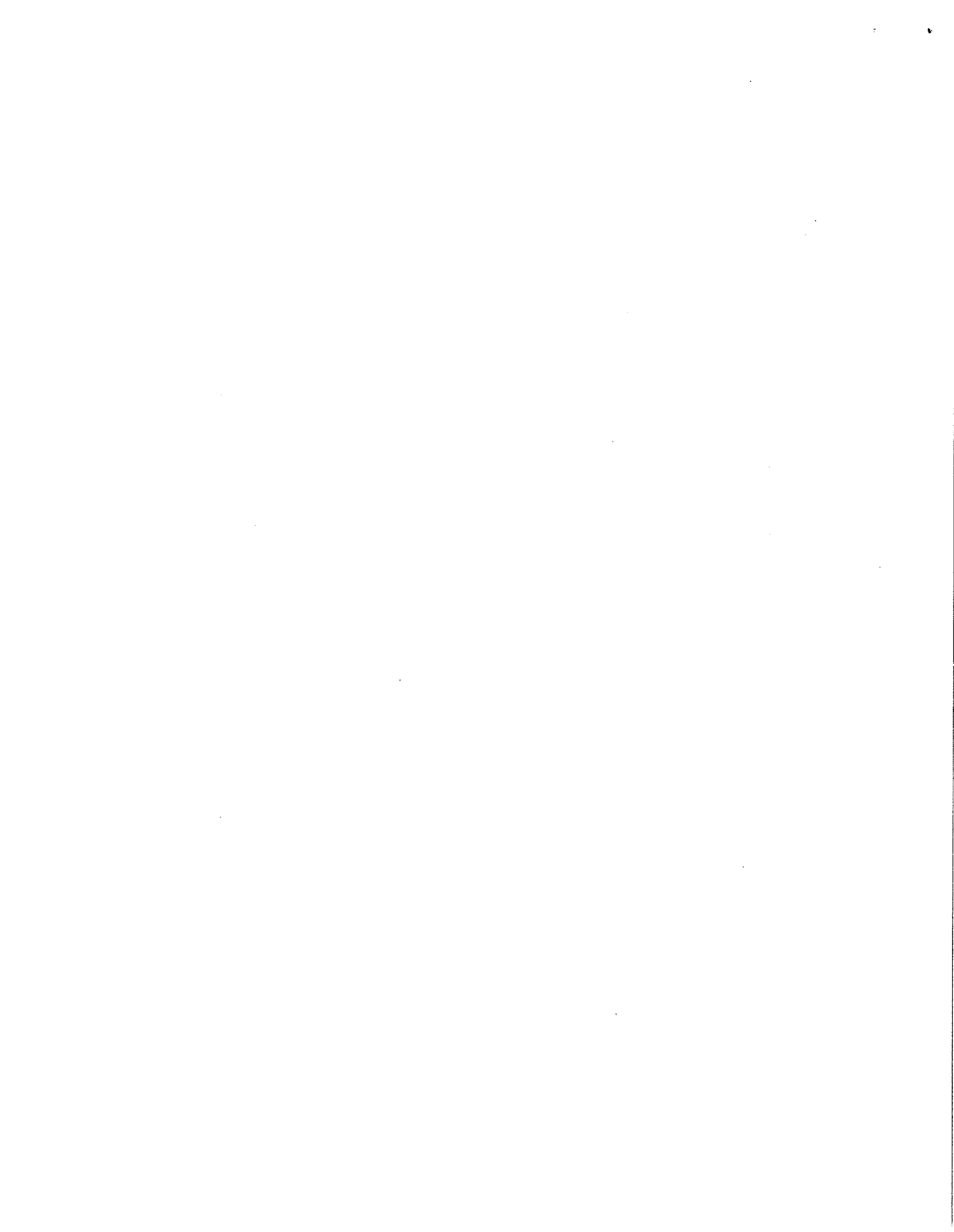


SEAL

Jeannie M. Weaver
Deputy City Clerk
City of Loveland City Clerk's Office
500 East Third Street
Loveland, CO 80537



Printed on
Recycled Paper





CITY OF LOVELAND CHARTER

As Proposed by the Home Rule Charter Commission
Roger Clark, Chair, Stephanie Albrecht, Fred E. Anderson
Janet Armstrong, Richard W. Ball, Gail Birdsall
Ray Emerson, Patricia A. Farnham, Larry A. Heckel
Karen Herman, Tamra A. Keller, Gene W. Kennedy
Gilbert Sandberg, Lisa K. Shultz, Ronald E. Weaks

Adopted by the
Citizens of Loveland, Colorado on May 21, 1996

and Filed with the
Colorado Secretary of State on May 23, 1996

and Received by the
Colorado Secretary of State on May 24, 1996

Last Amended November 6, 2007

Charter Amendments

Section No.	Election Date Amended	Election Date Added
2-6(c)	11/04/97	
3-5(b)	11/03/98	
4-8(b)	11/03/98	
5-1(a)(2)	11/03/98	
6-1	11/03/98	
7-7(c)	11/04/97	
10-2(a)	11/03/98	
8-1(c)	11/07/2000	
8-4(b)	11/06/2001	
Article 17	11/06/2007	

MUNICIPAL CHARTER
for the
CITY OF LOVELAND
STATE OF COLORADO

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Section 17-6. Disclosure; filing of reports.

Section 17-7. Reports to be public record.

Section 17-8. Unexpended campaign contributions.

Section 17-9. Independent expenditures.

Section 17-10. Duties of City Clerk.

Section 17-11. Violations procedures and penalties.

Section 17-12. Severability.

PREFATORY SYNOPSIS

The members of the Home Rule Charter Commission of the City of Loveland, Colorado, hereby submit to the City Council and to the registered electors a proposed Home Rule Charter which has been framed in conformity with Article XX of the Colorado Constitution and the Municipal Home Rule Act of 1971, as amended.

The Commission members have sought to prepare a Charter which provides a structure for full financial accountability to the taxpayers, the effective, efficient, and fiscally responsible conduct of the City government, and full participation in the affairs of the City by every member of the community.

The Commission recognizes that the Charter is a document of limitation on the home rule powers available to the City and its citizens. Therefore, the Commission has sought to include in the Charter

important protections for the citizens.

Special mention should be made of the place of the Charter in relation to other applicable laws. The Bill of Rights and other protections afforded citizens by the United States Constitution are, of course, primary. The Constitution of the State of Colorado also contains specific limitations on the City's home rule powers. For example, the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of the State Constitution, requires a vote of the people on such matters as the imposition of new taxes by the City, the incurring of debts by the City, and the retention or spending of certain revenues by the City. Article XI prohibits the City from lending or pledging its credit in aid of any private person or entity. Article XX empowers the State, rather than the City, to act on matters which are of "statewide" concern. The Commission recognizes that the Charter is subordinate to, and must keep faith with, these federal and state enactments which limit the City's home rule powers.

The Commission also recognizes that certain State statutes continue to apply to the City. Variations were made from such statutes only where home rule powers permitted and sound reasons existed.

With the foregoing principles in mind, the following summarizes some of the key provisions of the Charter as proposed by the Home Rule Charter Commission on March 5, 1996; future amendments may not be reflected in this summary.

ARTICLE 1 - DEFINITIONS

This article defines words and phrases used throughout the Charter.

ARTICLE 2 - GENERAL PROVISIONS

This article contains a summary statement of the Charter's purposes, describes the home rule powers of the City, and provides for the continuation of the City's Council-Manager form of government. It also provides the procedure for amendments to the Charter; under that procedure, amendments may be initiated by ordinance or by petition, but must all be approved by the electors.

ARTICLE 3 - CITY COUNCIL

This article provides for the organization and qualifications of the City Council. Eight Council members will continue to be elected, two from each ward. In lieu of a Council member at-large, a Mayor will be elected by the voters at large; no longer will the Mayor be selected by the members of the Council. However, the Mayor will be considered a member of the Council, and will have no greater powers than any Council member. Four-year overlapping terms of office continue for Council members; the Mayor's term is two years. A vacancy in office will be filled by the voters at a regular or special election, although an interim Council appointment will be permitted until the election. To preserve the right of the citizens to vote for (or vote out of office) the candidates of their choice, term

limitations are not imposed.

ARTICLE 4 - COUNCIL PROCEDURE

This article establishes meeting procedures for the Council. All regular and special meetings must be open to the public, and persons must be given a reasonable opportunity to be heard. The matters for which an executive session may be held are specified, as is the procedure for going into an executive session; both generally follow the State statutes. The procedure for adopting regular and emergency ordinances is established; an emergency ordinance will be adopted on one reading rather than two.

ARTICLE 5 - CODE OF ETHICS

This article establishes minimum ethical requirements for the Council, boards and commissions, and employees. The requirements are stricter than State statutes in that no exceptions are provided for the rule that an individual having a conflict of interest in a matter may not vote on the matter. An individual with a conflict of interest also may not participate in any discussion of the matter, or any executive session concerning the matter, and may not attempt to influence other members' votes. A City employee with a conflict of interest in a matter may not take any official action concerning the matter.

ARTICLE 6 - ELECTIONS

Current municipal election laws are generally retained in this article. Regular elections remain at November of each odd-numbered year. The number of wards in the City remains at four. Any future change in the number of wards would be accomplished only by an amendment to the Charter.

ARTICLE 7 - INITIATIVE, REFERENDUM, AND RECALL

This article reserves to the voters the power to initiate proposed ordinances, and the power to require adopted ordinances to be referred to a public vote. The number of registered electors required to sign an initiative or referendum petition remains at five percent of the total number of registered electors. This article also reserves to the voters the power to recall the Mayor or any Council member.

ARTICLE 8 - CITY MANAGER

This article establishes the qualifications and functions of the City Manager. It grants City employees the right to be discharged only for cause. It calls for the City Council to deal with municipal employees solely through the City Manager. It establishes that the City Manager alone has ultimate responsibility for all matters within the Manager's responsibility.

ARTICLE 9 - LEGAL AND JUDICIARY

This article provides for the qualifications and functions of the City Attorney and each Municipal Court judge.

ARTICLE 10 - BOARDS AND COMMISSIONS

This article continues all existing boards and commissions, and provides for other matters in relation to boards and commissions. Boards and commissions must follow the executive session procedures specified for the Council in Article 4.

ARTICLE 11 - FINANCE, BUDGET, AND AUDIT

This article sets out the procedures for the adoption of the annual budget. In addition to the proposed budget, the City Manager is also required to submit a five-year capital projects program. At least one public hearing must be held on the proposed budget and capital projects program. Each department head is required to keep the City Manager advised of any financial irregularities in the department. An annual financial audit is required.

ARTICLE 12 - MUNICIPAL BORROWING AND TAXATION

This article addresses debts and taxation. Because of constitutional requirements, including TABOR and local government debt provisions which predate TABOR (Article X, Section 6), voter approval will be required for the incurring of debts. Because a debt limit is not specifically addressed in the Charter, the debt limit established by State statute continues to apply (that statute, C.R.S. §31-15-302, establishes the limit at three percent of the actual value of taxable property in the City, excluding debts incurred in supplying water). Voter approval will also be required for tax matters in accordance with TABOR.

ARTICLE 13 - CITY-OWNED UTILITIES

City-owned utilities are addressed in this article. Utility rates will continue to be established by the City Council. Each utility's accounts must be kept separately. Although loans from utility funds to other City funds will be allowed, such loans will require the affirmative vote of a majority of the entire Council, and must be repaid with interest.

ARTICLE 14 - FRANCHISES AND PERMITS

A maximum fifteen-year duration is established by this article for franchises (which are granted to non-City owned utilities and others requiring long-term occupation of City rights-of-way). The right of referendum is guaranteed on all franchises. Other permits and licenses for the temporary use or occupation of the rights-of-way may be granted on a revocable basis.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

Among other miscellaneous matters addressed by this article are a voter approval requirement for the sale of park lands; a bond or insurance requirement for City personnel involved in handling City funds; a penalty for willful violation of the Charter; and the establishment of competitive bidding

requirements.

ARTICLE 16 - TRANSITIONAL PROVISIONS

Among the transitional matters addressed by this article are the effective date of the Charter; the repeal of legislation inconsistent with the Charter and continuation of legislation not inconsistent with the Charter; and the continuation of City employees, the Mayor and Council members, and board and commission members.

ARTICLE 17. CAMPAIGNS

This article regulates campaign finance in City elections. This article requires candidates for City office, issue committees and political committees to register with the City Clerk and to file with the Clerk certain reports. Campaign finance reports are to be posted on the City's website. Contribution limitations are also imposed in this article. The City Clerk's administrative duties are identified and penalties for violations under this article are defined.

In conclusion, the Commission believes that this Charter provides a structure for a responsible government for the City of Loveland, now and in the future, that will maintain and enhance the quality of life of the citizens, assure fiscal responsibility and accountability, continue the growth and progress of the City, and continue to be responsive to the needs and concerns of the citizens.

ARTICLE 1

DEFINITIONS

SECTION 1-1 -- DEFINITIONS

As used in this Charter, the following terms shall have the following meanings, except where the context clearly indicates otherwise:

- (a) "Board or commission" or "board and commission" means the boards and commissions established by or pursuant to this Charter.
- (b) "City" means the City of Loveland, Colorado.
- (c) "Council" or "City Council" means the body constituting the City Council of the City.
- (d) "Council member" means each member of the City Council except the Mayor.
- (e) "Emergency ordinance" means an ordinance which, in the opinion of the City Council, is necessary for the immediate preservation of the public property, health, welfare, peace, or safety.

- (f) "Employee" means each compensated person in the service of the City who is designated as an employee in the personnel rules and regulations of the City.
- (g) "Entire Council" means all of the nine (9) members of the Council provided for in Section 3-1(b).
- (h) "General statewide election" means the statewide election held on the Tuesday succeeding the first Monday of November in each even-numbered year.
- (i) "Mayor" means the Mayor of the City.
- (j) "Member of the Council" means the Mayor and each Council member.
- (k) "Newspaper" means a newspaper of general circulation in the City which meets the requirements for a legal newspaper as established in the State statutes.
- (l) "Publication" or "publish" means:
- (1) Publication in a newspaper; or
 - (2) In the event of an emergency, or when no such newspaper is available, posting.
- Anything published by such posting because of an emergency shall subsequently be actually published in a newspaper.
- (m) "Registered elector" means an elector who has registered to vote pursuant to the State statutes.
- (n) "Regular election" or "regular City election" means a City election held pursuant to Section 6-2.
- (o) "Special election" or "special City election" means a City election held at a time other than a regular election.
- (p) "State Constitution" or "Colorado Constitution" means the Constitution of the State of Colorado, as from time to time amended.
- (q) "State statutes" means the statutes of the State of Colorado, as from time to time amended.
- (r) "United States Constitution" means the Constitution of the United States of America, as from time to time amended.

ARTICLE 2

GENERAL PROVISIONS

SECTION 2-1 -- NAME, BOUNDARIES

The Colorado municipal corporation now existing as the "City of Loveland" shall remain and continue

to be a body politic and corporate under the same name and with the same boundaries until lawfully changed.

SECTION 2-2 -- PURPOSE OF CHARTER

It is the purpose of this Charter to establish a basic governmental structure that will provide for the effective and efficient conduct of the business of the City. It is intended that the Charter shall provide for full participation in the affairs of the City by every member of the community in the manner provided for herein.

SECTION 2-3 -- FORM OF GOVERNMENT

The municipal government provided by this Charter shall be known as a Council-Manager government.

SECTION 2-4 -- POWERS OF THE CITY

(a) The City shall have all the power of local self-government and home rule and all power possible for the City under the State Constitution. All such powers shall be exercised in a manner consistent with the United States Constitution, the State Constitution, and this Charter.

(b) Except as otherwise provided in this Charter, the City shall also have all powers granted to cities, towns, and municipalities by the State statutes.

(c) The enumeration of specific powers in this Charter shall not be considered as limiting or excluding any other power under Article XX of the State Constitution. All powers shall be exercised in the manner set forth in this Charter or, if not provided for in this Charter, in such manner as shall be provided by ordinance.

SECTION 2-5 -- AMENDMENTS TO THE CHARTER

This Charter may be amended in the manner provided in the State Constitution and the State statutes pertaining to home rule charter amendments. Proceedings to amend the Charter may be initiated by the filing of a petition meeting the requirements of the State statutes, or by the adoption of an ordinance by the City Council submitting the proposed amendment to a vote of the registered electors of the City.

SECTION 2-6 -- CHARTER AMENDMENTS ONLY BY MEASURES EXPRESSING A SINGLE SUBJECT

(a) No measure proposing an amendment to this Charter shall be submitted to the registered electors of the city if the measure contains more than one subject.

(b) The City Clerk shall approve for petition circulation measures proposing Charter amendments only when such measures contain a single subject.

(c) As used in this section, the single subject requirement means that the matters in the measure submitted for voter approval are necessarily or properly connected and are not disconnected or incongruous.

(Added at the election held November 4, 1997)

ARTICLE 3

CITY COUNCIL

SECTION 3-1 -- CITY COUNCIL

(a) The City Council shall be the governing body of the City, and shall have such powers as are possessed by the City and not conferred by this Charter on others. All such powers shall be exercised in the manner prescribed in this Charter or, if not provided for herein, in such manner as shall be provided by ordinance.

(b) The City Council shall consist of eight (8) Council members nominated and elected, two (2) from each ward, and a Mayor nominated and elected from the City at large.

(c) The first election of a Mayor from the City at large, as provided in Subsection (b) of this section, shall be at the next regular City election at which a Council member-at-large would have been elected if this Charter had not been adopted.

SECTION 3-2 -- MAYOR, MAYOR PRO TEM

(a) The Mayor shall be a member of the City Council and shall have the same voting powers as any Council member.

(b) The Mayor shall preside over meetings of the City Council, and shall be recognized as the head of the City government for all ceremonial purposes.

(c) By the affirmative vote of a majority of the entire Council, a Council member shall be appointed as Mayor pro tem, for the same term as the Mayor, to perform the responsibilities of the Mayor when the Mayor is absent or is otherwise unable to perform the responsibilities of the Mayor.

SECTION 3-3 -- MAYOR AND COUNCIL MEMBERS - QUALIFICATIONS

(a) Each Council member shall be a registered elector of the City who has resided in his or her respective ward for a period of at least twelve (12) consecutive months immediately preceding the election; except that, in case the boundaries of the ward are changed pursuant to Section 6-4 or as a result of annexation, residence for the prescribed time period, within territory added to the ward, shall be deemed to meet the residency requirements for the ward to which the territory was added.

(b) The Mayor shall be a registered elector of the City who has resided within the limits of the City for a period of at least twelve (12) consecutive months immediately preceding the election; except that, in the case of annexation, residence within the annexed territory for the prescribed time period shall be deemed to meet the residency requirements of this section.

(c) No person who has been convicted of embezzlement of public funds, bribery, perjury, solicitation of bribery, subornation of perjury, or a willful violation of this Charter, shall be nominated or elected as Mayor or Council member.

(d) Except as provided in this subsection, no person who is an employee of the City, or a City board or commission member, may serve as Mayor or Council member. Any such person who runs for and is elected as Mayor or Council member shall be deemed to have resigned from the position of City employee, or City board or commission member, on the date of taking office under Section 3-5. Nothing in this subsection shall prohibit the Council from appointing the Mayor or a Council member, after taking office, to a City board or commission if the person is eligible to be so appointed pursuant to the ordinance establishing the board or commission.

(e) No person may be a candidate for both Mayor and Council member at the same election, or hold both positions simultaneously.

(f) The Mayor and each Council member shall continue to meet the requirements of this section throughout the term of office.

SECTION 3-4 -- TERM LIMITS

There shall be no limit on the number of terms which may be served by the Mayor or by any Council member, other than that which exists through the exercise by the registered electors of the right to retain or not to retain any person in office.

SECTION 3-5 -- TERM OF OFFICE; TIME OF TAKING OFFICE; OATH

(a) Each Council member shall be elected for a four (4) year term. Council members' terms shall be staggered within each ward. The Mayor shall be elected for a two (2) year term.

(b) The Mayor and each Council member shall take office at the first regular or special meeting of the Council following their election, and shall continue in office until their successors have been elected and take office, or a vacancy is earlier established. **(Amended at the election of November 3, 1998)**

(c) Before taking office, the Mayor and each Council member shall take and file with the City Clerk an oath or affirmation to support the United States Constitution, the State Constitution, and the Charter and ordinances of the City, and to faithfully perform the duties of the office.

SECTION 3-6 -- COMPENSATION.

The Mayor and each Council member shall receive such salary and benefits as may be prescribed by ordinance. The salary of the Mayor, or of any Council member, shall not be increased or diminished during the term for which the Mayor or Council member has been elected. Subject to the Council's approval, the Mayor and Council members may be reimbursed for the actual and necessary expenses incurred in the performance of the duties of office.

SECTION 3-7 -- VACANCIES

(a) A vacancy shall exist if, during the term of office, the Mayor or a Council member dies, is judicially declared incompetent, resigns, is recalled without the election of a successor, no longer meets one (1) or more of the qualifications specified in Section 3-3, or has had more than three (3) consecutive unexcused absences from regular meetings of the Council.

(b) An absence from a regular meeting shall be considered unexcused only if the Council so determines by motion. The motion shall set forth the reasons for the determination.

(c) The fourth consecutive unexcused absence shall be deemed to constitute a vacation of the office effective on the date of the motion of the Council determining that such absence was unexcused.

(d) Except as otherwise provided in Subsections (e), (f), and (g) of this section, any vacancy which occurs in the office of Mayor or Council member shall be filled, for the remainder of the term, at a special election which shall be scheduled and held as provided in Section 6-3.

(e) If a regular City election will be held within one hundred eighty (180) days after the vacancy occurs, no special election shall be scheduled, and the vacancy shall be filled at that regular election.

(f) If a general statewide election will be held within one hundred eighty (180) days after the vacancy occurs, the vacancy shall be filled at a special election which shall be held on the date of that statewide election.

(g) The City Council, by a majority vote of the remaining members, may appoint a person who meets the qualifications of Section 3-3 to hold the office until the vacancy is filled by election pursuant to Subsection (d), (e), or (f). The term of the appointment shall not exceed one hundred eighty (180) days.

ARTICLE 4**COUNCIL PROCEDURE****SECTION 4-1 -- MEETINGS**

(a) The Council shall meet regularly at least twice each month. The Council shall prescribe by rules of the Council the day and hour of its regular meetings and the procedures governing meetings.

(b) The Council shall cause written minutes of its regular and special meetings to be taken and retained in the records of the City.

SECTION 4-2 -- SPECIAL MEETINGS AND BUSINESS AT SPECIAL MEETINGS

(a) Special meetings shall be called by the City Clerk on the request of the Mayor and any three (3) Council members.

(b) A special meeting shall be held on at least twenty-four (24) hours written notice to each member of the Council, served personally or left at the member's usual place of residence. The notice need not be served if the member has waived the notice in writing.

(c) The Council shall not take action on any item of business at any special meeting of the Council unless it has been stated in the notice of the meeting.

SECTION 4-3 -- QUORUM

A majority of the members of the Council holding office at the time shall be a quorum for the transaction of business at all Council meetings.

SECTION 4-4 -- MEETINGS TO BE PUBLIC; EXECUTIVE SESSIONS

(a) All regular and special meetings of the Council shall be open to the public, and persons shall have a reasonable opportunity to be heard at each meeting under such rules as the Council may prescribe.

(b) Notice of each regular and special meeting shall be posted at least twenty-four (24) hours in advance of the meeting. The notice shall include specific agenda information to the extent available.

(c) No formal action, no final policy decision, no rule, regulation, resolution, or ordinance, and no action approving a contract or calling for the payment of money, shall be adopted or approved except at a regular or special meeting. Subject to these requirements, a meeting may be recessed into an executive session by the affirmative vote of two-thirds (2/3) of the members of the Council present, for the following purposes only:

(1) To determine a position relative to issues subject to negotiation, to receive reports on negotiation progress and status, to develop negotiation strategy, and to instruct negotiators;

(2) To consider the acquisition or disposal of property if, in the judgment of the Council, premature disclosure of information might give any person an unfair competitive or bargaining advantage;

(3) For matters of attorney-client privilege, to receive legal advice from an attorney representing the City, and for matters required by law to be kept confidential;

(4) For matters critical to the personal safety of the members of the Council and for matters involving the protection and security of City property;

(5) For personnel matters; and

(6) To consider additional matters for which an executive session is permitted under the State statutes concerning the meetings of local public bodies.

(d) The general subject matter of any executive session shall be stated in the motion calling for the session.

(e) Except as authorized by the City Council, as required or permitted by judicial order, or as otherwise required or permitted by law, no participant in any executive session shall reveal any information gained as a result of the session. In addition to any other means available pursuant to law, a participant who is in doubt about the application of this subsection may seek a judicial order by requesting an in camera hearing in the District Court of Larimer County.

SECTION 4-5 -- COUNCIL ACTS

The Council shall act only by ordinance, resolution, or motion. Each action shall be recorded in the minutes of the meeting. The Council may select the appropriate form for its action, except where a particular form is required by the Charter. A true copy of every ordinance and resolution as adopted shall be numbered and retained in the records of the City.

SECTION 4-6 -- VOTING

(a) Each member's vote on an ordinance or resolution shall be recorded in the minutes.

(b) Except where a greater number is required in this Charter, the final adoption of any ordinance shall require the affirmative vote of a majority of the entire Council, and resolutions and motions shall require the affirmative vote of a majority of the members of the Council present.

(c) No member of the Council shall vote on any matter concerning the member's own conduct.

(d) No member of the Council shall vote on any matter in which the member has a conflict of interest, as defined in Section 5-1.

(e) Except as provided in Subsections (c) and (d) of this section, each member of the Council who is present shall vote on each matter. Any refusal to vote, except when an abstention is required by Subsections (c) or (d) of this section, shall be recorded as an affirmative vote.

SECTION 4-7 -- ACTION BY ORDINANCE REQUIRED

In addition to such acts of the Council as are required by the State Constitution or this Charter to be by ordinance, every act of the Council making an appropriation, authorizing the borrowing of money, imposing a tax or increasing a tax rate, approving the transfer of fee ownership in real property owned

by the City, approving the sale of water rights owned by the City, or establishing any regulation for violation of which a fine, imprisonment, or both may be imposed, shall be by ordinance.

SECTION 4-8 -- FORM OF ORDINANCE

(a) Every ordinance shall be introduced in printed form. The enacting clause of all ordinances shall be: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO.

(b) Except as otherwise provided in this Charter, all ordinances shall take effect ten (10) days after publication following final adoption. Unless otherwise specifically provided in the ordinance, every ordinance shall be deemed to contain a severability clause whether stated therein or not. **(Amended at the election held November 3, 1998)**

SECTION 4-9 -- ORDINANCES - ADOPTION PROCEDURE

(a) The following procedure shall be followed in adopting any ordinance except an emergency ordinance:

(1) The ordinance shall be introduced by motion at a regular or special meeting of the Council.

(2) The ordinance shall be read in full or by title.

(3) After the first reading, the Council shall vote to amend, adopt, or reject the ordinance, or take such other action as it deems appropriate.

(4) If the ordinance is adopted on first reading, it shall be published in full.

(5) The ordinance shall be introduced by motion at a second regular or special meeting of the Council held not earlier than four (4) days after the first publication.

(6) Prior to taking final action on the ordinance, the Council shall permit public comments on the ordinance, then shall vote to amend, finally adopt, or reject the ordinance, or take such other action as it deems appropriate.

(7) Upon final adoption, the ordinance shall be published either in full or by title only, as the Council may direct; however, if the ordinance is amended prior to final adoption and is published by title only, the amendment shall be published in full.

(8) The ordinance shall be signed by the Mayor and attested by the City Clerk, and affidavits of publication shall be retained with the ordinance in the City's records.

(b) Every ordinance published by title shall contain a notice that copies of the ordinance are available at the office of the City Clerk.

SECTION 4-10 -- EMERGENCY ORDINANCES

(a) An emergency ordinance shall require the affirmative vote of two-thirds (2/3) of the entire Council. The facts showing the emergency shall be specifically stated in the ordinance.

(b) An emergency ordinance may be introduced and finally adopted at any regular or special meeting, shall require only one (1) reading, and shall not require publication prior to final adoption. An emergency ordinance shall take effect upon final adoption or on such later date as specified in the ordinance. Following final adoption, an emergency ordinance shall be published in full.

SECTION 4-11 -- CODIFICATION

The Council shall cause ordinances of a general and permanent nature to be codified. The codification, or any revisions to the codification, may be adopted by reference as provided in Section 4-12.

SECTION 4-12 -- ADOPTION OF CODES BY REFERENCE

The Council may adopt, by ordinance, any code by reference. The procedure for adoption of a code by reference shall be as provided in the State statutes applicable to the adoption of codes by reference, or such other procedure as the Council may provide by ordinance. Every ordinance adopting a code by reference shall contain a notice that copies of the code are available at the office of the City Clerk. Any penalty clause in such a code may be adopted only if set forth in full in the adopting ordinance.

SECTION 4-13 -- PUBLIC RECORDS

All public records of the City shall be open for inspection by any person in accordance with the State statutes concerning public records.

SECTION 4-14 - FINES AND PENALTIES FOR ORDINANCE VIOLATIONS

Penalties for the violation of City ordinances shall be established by ordinance. No fine or sentence for such a violation shall exceed the maximums established by the State statutes for municipal ordinance violations.

ARTICLE 5**CODE OF ETHICS****SECTION 5-1 - CONFLICTS OF INTEREST - GENERAL**

(a) A "conflict of interest" for purposes of this Article, means:

(1) any pecuniary, property, or commercial benefit of any person covered by this Article or of any parent, spouse, or child of such person; or

(2) any personal or private interest of any person covered by this Article, in any matter proposed or pending before the Council, board or commission, as applicable. However, a "conflict of interest" does not include any matter involving the common public interest, or any matter in which a similar benefit is

conferred upon or is available to all persons or property similarly situated. **(Amended at the election held November 3, 1998)**

(b) No person subject to the requirements of this Article shall fail to comply with the applicable disclosure and non-action requirements of this Article.

SECTION 5-2 - DISCLOSURE AND NON-ACTION - MATTERS INVOLVING CONFLICT OF INTEREST

(a) If the Mayor, any Council member, or any member of a board or commission has a conflict of interest with regard to any matter before the Council, board, or commission, as applicable, he or she shall follow the disclosure and other requirements of this section.

(b) At or before the time the matter is heard, the member shall disclose the interest to the Council, board, or commission, as applicable. The member shall not vote on or otherwise take any formal action concerning the matter, shall not participate in any executive session concerning the matter, and shall refrain from attempting to influence any other member in voting on the matter.

SECTION 5-3 - CITY EMPLOYEES; OTHER PROVISIONS CONCERNING CONFLICTS OF INTEREST

(a) No City employee shall take any official action concerning any matter as to which the employee has a conflict of interest.

(b) Neither the Mayor, any Council member, any board or commission member, nor any employee, shall use for personal or private gain, or for any other personal or private purposes, any information which is not available to the public and which is obtained by reason of the person's position with the City, or disclose any such information except as required by law.

(c) The provisions of this Article shall be in addition to any applicable conflict of interest provisions of the State statutes that are at least as restrictive as this Article, and shall supersede any such conflict of interest provisions of the State statutes that are less restrictive than this Article.

ARTICLE 6 ELECTIONS

SECTION 6-1 -- COLORADO MUNICIPAL ELECTION LAWS ADOPTED

City elections shall be governed by the State statutes contained in the Colorado Municipal Election Code, except as otherwise provided by this Charter or by ordinance. All regular and special elections shall be nonpartisan. **(Amended at the election held November 3, 1998)**

SECTION 6-2 -- REGULAR ELECTIONS

A regular election shall be held in November of each odd-numbered year on the date established by the State statutes for the regular elections of statutory cities.

SECTION 6-3 -- SPECIAL ELECTIONS

A special election shall be called by a resolution adopted at least thirty (30) days prior to the election. The resolution calling a special election shall set forth the purpose of the election.

SECTION 6-4 -- WARDS

(a) The City shall be divided into four (4) wards, the boundaries of which shall be changed only by a resolution adopted by the affirmative vote of a majority of the entire Council.

(b) The boundaries of the wards established pursuant to this section shall not be changed more often than once in six (6) years, unless change is necessary to conform to constitutional apportionment requirements. Territory added to the City shall become a part of such ward or wards as may be determined by ordinance; but this shall not prevent apportionment to conform to constitutional requirements.

(c) Notwithstanding any other provision of this Charter, no change in ward boundaries shall create a vacancy during the term of any Council member in office at the time of the change.

SECTION 6-5 -- CONDUCT OF ELECTIONS

The City Clerk shall have charge of all activities and duties required pursuant to this Charter relating to the conduct of City elections. In any case where election procedure is in doubt, the City Clerk shall prescribe the procedure to be followed.

ARTICLE 7**INITIATIVE, REFERENDUM, AND RECALL****SECTION 7-1 -- INITIATIVE**

(a) The registered electors of the City may initiate a proposed ordinance, pursuant to the initiative power reserved by Article V, Section 1(9) of the State Constitution, as to any legislative matter which is subject to said initiative power. Any initiated measure shall be in the form of an ordinance. The ordinance shall be initiated pursuant to the State statutes which establish procedures for a municipal initiative, except as otherwise provided in this Charter.

(b) An initiative petition shall be signed by registered electors of the City equal in number to at least five (5) percent of the total number of electors of the City registered to vote as of the date established by the State statutes for determining such percentage.

(c) The City Clerk shall not count as valid any signature on an initiative petition if the date of the signature is prior to the date the form of the petition was approved by the City Clerk.

(d) The City Clerk shall not count as valid any signature on an initiative petition if more than ninety (90) days have elapsed between the date the form of the petition was approved by the City Clerk and the date of the signature.

SECTION 7-2 -- REFERENDUM

(a) The registered electors may require an adopted ordinance to be referred to them at an election, pursuant to the referendum power reserved by Article V, Section 1(9) of the State Constitution, to the extent the ordinance constitutes a legislative matter which is subject to said referendum power. Such an ordinance shall be referred pursuant to the State statutes which establish procedures for a municipal referendum, except as otherwise provided in this Charter. The referendum power shall not apply to an emergency ordinance.

(b) A referendum petition shall be signed by registered electors of the City equal in number to at least five (5) percent of the total number of electors of the City registered to vote as of the date established by the State statutes for determining such percentage.

(c) The City Clerk shall not count as valid any signature on a referendum petition if the date of the signature is prior to the date the form of the petition was approved by the City Clerk.

SECTION 7-3 -- RECALL

(a) The Mayor or any Council member may be recalled from office pursuant to the State statutes which establish procedures for the recall of municipal elective officers, except as otherwise provided in this Charter.

(b) A petition to recall a Council member shall be signed by registered electors of the ward from which the Council member was elected, and a petition to recall the Mayor shall be signed by registered electors of the City. The signers shall number at least twenty-five (25) percent of the entire vote cast for all the candidates for that particular office at the last preceding election at which the person sought to be recalled was elected to office.

(c) If the office held by the person sought to be recalled would otherwise be filled at a regular City election scheduled to be held within ninety (90) days after submission of the recall petition, the petition shall not be accepted and no recall election shall be held.

(d) If a regular City election is scheduled to be held within ninety (90) days after submission of the recall petition, even though that election is not the one at which the office held by the person sought to be recalled would otherwise be filled, the recall election shall be held at the same time as that regular City election.

(e) If a general statewide election is scheduled to be held within ninety (90) days after submission of the recall petition, the recall election shall be held at the same time as that statewide election.

(f) After one (1) recall petition and election, no further petition shall be filed against the same person during the term for which such person was elected, unless the signers number at least fifty (50) percent

of the entire vote cast for all the candidates for that particular office at the last preceding election at which the person sought to be recalled was elected to office.

SECTION 7-4 -- PROHIBITED ACTION BY COUNCIL

(a) No initiated ordinance adopted by the registered electors of the City may be substantively amended or repealed by the Council during a period of one (1) year after the date of the election on the initiated ordinance, unless the amendment or repeal is approved by the affirmative vote of two-thirds (2/3) of the entire Council.

(b) No referred ordinance repealed by the registered electors of the City may be readopted by the Council during a period of one (1) year after the date of the election on the referred ordinance, unless the readoption is approved by the affirmative vote of two-thirds (2/3) of the entire Council.

SECTION 7-5 -- WITHDRAWAL OF PETITION

An initiative, referendum, or recall petition may be withdrawn at any time prior to thirty (30) days preceding the day scheduled for a vote, by filing with the City Clerk a written request for withdrawal signed by a majority of the persons who are designated in the petition as representing the signers on matters affecting the petition. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

SECTION 7-6 -- PETITION FORMS TO BE PROVIDED

The City Clerk shall provide, upon request, sample forms of initiative, referendum, and recall petitions which conform to the requirements of this Charter.

SECTION 7-7 -- SINGLE-SUBJECT REQUIREMENT -- INITIATED AND REFERRED MEASURES

(a) No measure proposing an amendment to the ordinances of the city by means of a petition for initiative or referendum shall be submitted to the registered electors of the City if the measure contains more than one subject.

(b) The City Clerk shall approve for petition circulation measures proposing referred ordinances or initiated ordinances only when such measures contain a single subject.

(c) As used in this section, the single subject requirement means that the matters in the measure submitted for voter approval are necessarily or properly connected and are not disconnected or incongruous. **(Added at the election held November 4, 1997)**

ARTICLE 8

CITY MANAGER

SECTION 8-1 -- APPOINTMENT, QUALIFICATIONS, EVALUATION AND REMOVAL

(a) The City Council, by the affirmative vote of two-thirds (2/3) of the entire Council, shall appoint a City Manager to serve at the pleasure of the Council.

(b) The Council shall establish the City Manager's compensation.

(c) The City Manager shall become a resident of the City or the Community Influence Area as defined in the Comprehensive Plan adopted by the City Council on May 2, 2000, as amended from time to time, within six ((6) months of appointment, and shall remain a resident of such area throughout the Manager' appointment . **(Amended at the election held November 7, 2000.**

(d) The City Council shall evaluate the City Manager's performance at least annually.

(e) The removal of the City Manager shall require the affirmative vote of two-thirds (2/3) of the entire Council.

SECTION 8-2 -- ACTING CITY MANAGER

The City Council shall designate a qualified City employee to serve as Acting City Manager during the Manager's absence or disability, or during times when the position is vacant.

SECTION 8-3 -- EXCLUSIVE SERVICE TO CITY

During the period of the appointment, the City Manager shall not be an employee of, or perform any services for compensation from, any person or entity other than the City, unless the Manager has first obtained the approval of the City Council.

SECTION 8-4 -- POWERS AND DUTIES OF MANAGER

The City Manager shall be the chief administrative officer of the City. The City Manager shall have the following powers and duties:

(a) Be responsible for the enforcement of the ordinances, resolutions, franchises, contracts, and other enactments of the City.

(b) Establish and implement personnel rules and regulations for City employees. Such rules and regulations shall provide for the selection, promotion, and retention of City employees on the basis of ability, training, experience, and performance. In addition, such rules and regulations shall provide that no City employee shall be discharged, except for cause, from a position of employment which the employee has held for six (6) months or longer, unless the City employee is a police officer, in which case this timer period shall be one (1 year) year or longer. . Nothing in this subsection shall preclude the establishment or application of rules and regulations for a layoff, a reduction in force, or an administrative reorganization, or the establishment of temporary or seasonal positions of employment.

(Amended at the election held November 6, 2001)

- (c) Cause a proposed budget to be prepared and submitted to the Council annually, and be responsible for the administration of the adopted budget.
- (d) Cause to be prepared and submitted to the City Council, as of the end of the fiscal year, a complete report on finances and administrative activities of the City for that year, and make other reports as requested by the Council concerning the matters of the City in the Manager's charge.
- (e) Keep the City Council advised of the financial condition and future needs of the City.
- (f) Except as to the Municipal Court and the office of the City Attorney, exercise supervision and control over all City departments, and make recommendations to the City Council concerning the establishment, consolidation or abolition of such departments.
- (g) Attend City Council meetings and participate in discussions with the Council in an advisory capacity.
- (h) Be responsible for informing the public on City functions and activities.
- (i) Perform such other duties as prescribed by this Charter, or as required by the Council and not inconsistent with this Charter.

SECTION 8-5 -- COUNCIL'S RELATIONSHIP TO EMPLOYEES

- (a) Neither the Council, the Mayor, nor any Council member, shall dictate or interfere with the appointment of, or the duties of, any City employee subordinate to the City Manager or to the City Attorney, or prevent or interfere with the exercise of judgment in the performance of the employee's City responsibilities. The Council, the Mayor, and each Council member, shall deal with such employees solely through the Manager or the City Attorney, as applicable, and shall not give orders or reprimands to any such employee.
- (b) The City Manager alone shall be responsible to the City Council for the proper administration of all matters placed in the Manager's charge by or pursuant to this Charter.

ARTICLE 9

LEGAL AND JUDICIARY

SECTION 9-1 - CITY ATTORNEY

- (a) The City Council, by the affirmative vote of two-thirds (2/3) of the entire Council, shall appoint a City Attorney to serve at the pleasure of the Council.
- (b) The Council shall establish the City Attorney's compensation.
- (c) The City Attorney shall be, at all times while serving as City Attorney, an attorney at law admitted to practice in Colorado.

- (d) The removal of the City Attorney shall require the affirmative vote of two-thirds (2/3) of the entire Council.
- (e) The City Attorney shall serve as the chief legal advisor for the City, shall advise the Council and other City officials in matters relating to their official powers and duties, and shall perform such other duties as may be designated by the Council.
- (f) Employees subordinate to the City Attorney shall be subject to the personnel rules and regulations established pursuant to Section 8-4(b), but supervision and control over such employees shall be exercised by the City Attorney.
- (g) The City Council shall evaluate the City Attorney's performance at least annually.
- (h) The Council may employ such special counsel as may be recommended by the City Attorney, the City Manager, or the Council.

SECTION 9-2 - MUNICIPAL COURT; MUNICIPAL JUDGE

- (a) There shall be a Municipal Court vested with jurisdiction over matters arising under the Charter and ordinances of the City. The Municipal Court shall be a court of record.
- (b) The City Council shall appoint, by the affirmative vote of two-thirds (2/3) of the entire Council, a presiding municipal judge and such deputy municipal judges as the Council deems necessary. Each municipal judge shall be appointed for a two (2) year term.
- (c) The Council shall establish the compensation for the presiding municipal judge and each deputy municipal judge. The compensation shall not be dependent upon the outcome of the matters to be decided by the judge.
- (d) The presiding municipal judge and each deputy municipal judge shall be, at all times while serving as judge, an attorney at law admitted to practice in Colorado.
- (e) The removal of any judge during the term of office shall require the affirmative vote of two-thirds (2/3) of the entire Council. Any such removal shall only be for cause as specified in the statutes applicable to the removal of municipal judges, and for any other conduct which would constitute a violation of the Colorado Code of Judicial Conduct, as from time to time amended, if committed by a judge subject to such Code.

ARTICLE 10

BOARDS AND COMMISSIONS

SECTION 10-1 -- EXISTING BOARDS AND COMMISSIONS

Each board and commission existing at the time this Charter is adopted shall continue, except as

otherwise provided by ordinance. The City Council may, by ordinance, establish, consolidate or abolish any board or commission, except that the Planning Commission and the Board of Adjustment and Appeals may not be abolished.

SECTION 10-2 -- BOARDS AND COMMISSIONS - GENERAL

(a) Except as otherwise provided by this Charter or by ordinance, each board and commission shall be advisory in character. The selection, term, and responsibilities concerning each board and commission shall be as established by ordinance. The policies and other matters concerning each board and commission shall be as established by resolution. **(Amended at the election held November 3, 1998)**

(b) The appointment or removal of any board or commission member who is required by ordinance to be appointed by the City Council shall require the affirmative vote of a majority of the entire Council. A member appointed by the City Council shall serve at the pleasure of the Council.

(c) The members of each board and commission shall serve without compensation, but may be paid authorized expenses actually incurred in the performance of the duties of office.

(d) No board or commission shall hold any executive session except in accordance with procedures which shall be consistent with those established in Section 4-4, and only for the purposes specified in Section 4-4.

ARTICLE 11

FINANCE, BUDGET, AND AUDIT

SECTION 11-1 -- FISCAL YEAR

The fiscal year shall be the same as the calendar year.

SECTION 11-2 -- ANNUAL BUDGET ESTIMATES

(a) Unless a different date is set by the City Council, each department head shall submit to the City Manager, on or before the first day of August, the department's proposed budget for the next ensuing fiscal year.

(b) Unless a different date is set by the City Council, the City Manager shall submit to the Council, on or before the first Tuesday in October of each year, a proposed budget for the City for the next ensuing fiscal year.

(c) The proposed budget shall provide a complete financial plan for the City in a format acceptable to the City Council. Except as otherwise provided by this Charter, the proposed budget shall be prepared in accordance with the State statutes establishing the local government budget laws and the local government uniform accounting laws.

SECTION 11-3 -- CAPITAL BUDGET ESTIMATES

As a part of the proposed budget or as a separate report attached thereto, the City Manager shall also present a program of proposed capital projects for the ensuing fiscal year and the four (4) fiscal years thereafter. Estimates of the cost of such projects shall be submitted together with suggested methods of financing the same. The City Manager may recommend the omission or deferment of projects.

SECTION 11-4 -- PUBLIC HEARINGS

(a) Within fourteen (14) days after it receives the proposed budget and the proposed capital projects program from the City Manager, the City Council shall set the date and time for at least one (1) public hearing on the same.

(b) Notice of the public hearing shall be published at least once, and shall state that copies of the proposed budget and the proposed capital projects program are available for public inspection in the office of the City Clerk.

SECTION 11-5 -- COUNCIL ACTION ON BUDGET

(a) Unless another date is provided by ordinance, the Council shall adopt the budget, by ordinance, on or before the date provided by law for certification of the ad valorem property tax levy.

(b) If the Council fails to adopt the budget by the required date, the amounts budgeted and appropriated for the then-current fiscal year, together with any additional amounts necessary for payments of principal and interest on securities and other payment obligations, shall be deemed the budgeted and appropriated amounts for the next fiscal year on a month-to-month basis, with all items in it prorated accordingly, until such time as the Council adopts the budget for that fiscal year.

(c) Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated, and shall constitute a levy of the ad valorem property tax therein provided. The Council shall cause the ad valorem property tax levy to be certified as provided by law.

(d) Notwithstanding any other provision of this Charter, an ordinance adopting or amending the budget, making any appropriation, or levying the ad valorem property tax, shall be effective upon final adoption.

SECTION 11-6 - BUDGET CONTROL

(a) Except as otherwise provided in this Charter or by ordinance, procedures concerning supplemental appropriations, transfers, contingencies, and other matters pertaining to the budget, shall be as set forth in the State statutes concerning the budgets of local governments.

(b) During the fiscal year, no City department or other spending unit shall expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts appropriated by the City Council. Any contract, verbal

or written, made in violation of this subsection shall be void, and no moneys of the City shall be paid on such contract; except that the City Council may ratify such a contract if it determines that ratification would be in the best interest of the City, and if it first adopts an ordinance making the necessary appropriation.

(c) Nothing in this section shall prevent the City from entering into a multiple-year contract in the manner provided by law.

(d) The City Council, by resolution, may authorize a maximum amount which the City Manager may transfer from any unused balance of any general fund appropriation or portion thereof from one (1) department or other spending unit to another. Except as otherwise provided in this Charter, the transfer of monies from one (1) fund to another shall only be made by an ordinance amending the budget as adopted.

(e) Monthly or more often if required by the Council, the City Manager shall submit to the Council data showing the relation between the estimated and actual revenues and expenditures to date.

(f) The balance in any budget appropriation at the end of the fiscal year shall become a part of the same fund for the next fiscal year.

(g) Each department head shall advise the City Manager of any financial irregularities in the department.

SECTION 11-7 -- INDEPENDENT AUDIT

The Council shall provide for a financial audit, which shall be performed at least annually by a certified public accountant selected by the Council. The audit shall be performed in accordance with the State statutes establishing the local government audit laws. Copies of the audit shall be made available for public inspection.

ARTICLE 12

MUNICIPAL BORROWING AND TAXATION

SECTION 12-1 -- FORMS OF BORROWING

Subject to any applicable limitations in the Colorado Constitution, the City may borrow money and issue securities or enter into other obligations to evidence such borrowing in any form and in any manner determined by the Council to be advantageous to the City.

SECTION 12-2 -- MUNICIPAL TAXATION

The City Council may adopt, by ordinance, such taxes as are not prohibited for home rule municipalities by the Colorado Constitution, subject to any applicable limitations in said Constitution, including any applicable voter approval requirements.

ARTICLE 13**CITY-OWNED UTILITIES****SECTION 13-1 -- AUTHORITY AND POWERS - UTILITIES**

The City shall have and exercise, in any matter pertaining to City-owned utilities, including water and water rights and acquisition thereof, and bonded indebtedness in connection therewith, all the authority and powers provided by the Colorado Constitution and statutes and other applicable laws.

SECTION 13-2 -- UTILITY RATES AND FINANCES

(a) The Council shall from time to time fix, establish, maintain, and provide for the collection of rates, fees, and charges for water, sewer, electric service, and other utility services furnished by the City.

(b) Such rates, fees, and charges shall be sufficient, in the Council's judgment, to provide good service to the customers, pay all bonded indebtedness, pay legally required refunds, cover the cost of operation, maintenance, additions, extensions, betterments, and improvements, provide a reasonable return on the City's investment in utility properties and capital investments, and reimburse the general fund for administrative services and overhead provided and incurred by the City on behalf of each utility, together with a sum which, in the Council's judgment, is equivalent to that which would have been obtained from a franchise fee or utility occupation tax on the utility.

(c) The provisions of this section shall be subject at all times to the performance by the City of all covenants and agreements made by it in connection with the issuance, sale or delivery of any bonds of the City, payable out of the revenues derived from the operation of its water, sewer, electric, and other utilities, whether such revenue bonds be heretofore or hereafter issued.

SECTION 13-3 -- SEPARATE UTILITY ACCOUNTS

(a) The accounts of each utility owned and operated by the City shall be kept separate and distinct from all other accounts of the City.

(b) Loans from a utility account to another City account shall be allowed with the Council's approval, but shall require the affirmative vote of a majority of the entire Council. All loans will require a term to be specified and the payment of interest thereon. The interest rate shall be adjusted annually to a rate equal to the average return of City investments for the preceding twelve (12) months.

ARTICLE 14**FRANCHISES AND PERMITS****SECTION 14-1 -- NEW FRANCHISES AND RENEWALS**

(a) No franchise shall be granted or renewed for a longer period than fifteen (15) years.

(b) Any franchise, and any renewal of or amendment to a franchise, shall be granted by the City Council by ordinance. Any ordinance granting, renewing or amending a franchise shall be subject to a timely

referendum, notwithstanding any emergency declaration in the ordinance, if one is filed in accordance with the procedures and requirements set forth in this Charter. If such an election is ordered, the grantee of such franchise shall deposit the cost of the election with the City Clerk in an amount determined by the City Clerk.

SECTION 14-2 -- REVOCABLE PERMITS OR LICENSES

The City may grant a permit or license at any time for the temporary use or occupation of any street, alley, other public way, or City-owned place. Any such permit or license shall be revocable by the City at any time and without cause, whether or not such right to revoke is expressly reserved in the permit or license.

ARTICLE 15

MISCELLANEOUS PROVISIONS

SECTION 15-1 -- INTERPRETATION

(a) Except as otherwise specifically provided in or indicated by the context, all words used in this Charter indicating the present tense shall not be limited to the time of the adoption of this Charter, but shall extend to and include the time of the happening of any event or requirement for which provision is made herein.

(b) Except as otherwise specifically provided in or indicated by the context, the singular number shall include the plural, the plural shall include the singular, and the word "person" may extend and be applied to bodies politic and corporate and to partnerships as well as individuals.

SECTION 15-2 -- SEVERABILITY OF CHARTER PROVISION

If any part of this Charter or the application thereof to any person or circumstance is found to be invalid, such invalidity shall not affect the validity of any remaining part of this Charter, and to this end this Charter is declared to be severable.

SECTION 15-3 -- CONVEYANCE OF REAL PROPERTY OWNED AND USED FOR PARK PURPOSES

Fee ownership in any land which is owned or acquired by the City, and which is used by the City for park purposes, shall not be conveyed except upon the approval of the registered electors of the City voting thereon at a regular or special election.

SECTION 15-4 -- BONDING

Before permitting any member of the Council or any City employee to perform any function or duty involving the handling of City funds, the City shall obtain a fidelity bond or insurance coverage in an amount acceptable to the Council.

SECTION 15-5 -- BEQUESTS, GIFTS AND DONATIONS.

Except as otherwise provided in this Charter, the Council, on behalf of the City, may receive bequests, gifts, and donations of all kinds of property with power to manage, sell, lease, or otherwise dispose or provide for the disposition of the same.

SECTION 15-6 -- SATURDAYS, SUNDAYS AND HOLIDAYS

If the last day of any period required to be computed under this Charter is a Saturday, Sunday, or City holiday, the period shall be extended to include the next day which is not a Saturday, Sunday, or City holiday.

SECTION 15-7 -- PENALTY FOR VIOLATION OF CHARTER

Any willful violation of a provision of this Charter shall be deemed a misdemeanor and may be prosecuted in the Municipal Court. Any person convicted of such a violation may be punished by imprisonment for a term not to exceed the maximum term of imprisonment that the Municipal Court is authorized to impose pursuant to Section 4-14, by a fine in an amount not to exceed the maximum fine that the Municipal Court is authorized to impose pursuant to Section 4-14, or by both such fine and imprisonment.

SECTION 15-8 -- COMPETITIVE BIDDING

Purchases of or contracts for supplies, material, equipment, or improvements shall be made under such requirements with respect to competitive bidding as the Council may prescribe by ordinance.

ARTICLE 16**TRANSITIONAL PROVISIONS****SECTION 16-1 -- EFFECTIVE DATE OF CHARTER**

This Charter shall become effective immediately upon filing and recording with the Secretary of State of Colorado following approval of the registered electors of the City.

SECTION 16-2 -- PRIOR CITY LEGISLATION

All ordinances, resolutions, rules, and regulations of the City which are not inconsistent with this Charter, and which are in force and effect on the effective date of this Charter, shall continue in full force and effect until repealed or amended. Any provision of any ordinance, resolution, rule, or regulation which is inconsistent with this Charter is hereby repealed.

SECTION 16-3 -- CONTINUATION OF PERSONNEL

The employment of each employee of the City serving on the effective date of this Charter shall continue as if this Charter had not been adopted.

SECTION 16-4 -- CONTINUATION OF TERMS OF OFFICE - MAYOR, COUNCIL MEMBERS, AND BOARD AND COMMISSION MEMBERS

Notwithstanding any other provision of this Charter, the terms of office of the Mayor and each Council member, and of the members of each City board and commission, serving prior to the effective date of this Charter, shall continue as if this Charter had not been adopted.

SECTION 16-5 -- SAVING CLAUSE

Neither the adoption of this Charter nor the amendment or repeal of any ordinance, resolution, rule, or regulation, or portion thereof, inconsistent with this Charter, shall be construed to destroy any property right, contract right, or right of action of any nature or kind, civil or criminal, vested in or against the City by virtue of any such ordinance, resolution, rule, or regulation, or portion thereof, or any other provision of law theretofore existing or otherwise accruing to the City. All such rights shall vest in and inure to the City or to any persons asserting any such claims against the City as fully and as completely as though this Charter had not been adopted, and as though there had been no amendment or repeal of any ordinance, resolution, rule, regulation, or portion thereof. Such rights shall include but not be limited to:

- (a) Any contractual relationships between the City and any employee by virtue of any retirement and pension plans in effect on the effective date of this Charter; and
- (b) Any franchise ordinances and agreements of the City in effect on the effective date of this Charter.

ARTICLE 17

CAMPAIGNS

SECTION 17-1 -- LEGISLATIVE DECLARATION

The citizens of the City of Loveland hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by full and timely disclosure of campaign contributions, strong enforcement of campaign laws, and limiting campaign contributions

SECTION 17-2 -- DEFINITIONS

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

- (a) *Ballot issue, ballot question or issue* shall mean any measure put to a vote of the registered electors of the City by the City Council at any election held under the provisions of this Charter. For purposes of this Article 17, *ballot issue, ballot question or issue* shall also mean any measure for which recall, initiative or referendum proceedings have been commenced pursuant to Article 7 of this Charter.

(b) *Candidate* shall mean any person who seeks nomination or election to the office of Mayor or Councilmember at any City election. A person is a candidate if the person has publicly announced an intention to seek such election or has filed nominating petitions for the office of Mayor or Councilmember. *Candidate* shall also mean any elected official who is the subject of recall proceedings pursuant to Section 7-3 of this Charter.

(c) *Candidate committee* shall mean a person, including the candidate, or persons with the common purpose of receiving contributions and making expenditures under the authority of a candidate. A candidate shall have only one (1) candidate committee. A candidate committee shall be considered open and active until the committee has filed a termination report with the City Clerk.

(d) *Contribution* shall mean:

- (1) The payment, loan, pledge or advance of money, or guarantee of a loan, made to any candidate committee, issue committee or political committee;
- (2) Any payment made to a third party for the benefit of any candidate committee, issue committee or political committee;
- (3) Anything of value given, directly or indirectly, to a candidate committee for the purpose of promoting the candidate's nomination, retention, recall or election; or
- (4) With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee, issue committee or political committee.

Contribution shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee or issue committee.

(e) *Contribution in kind* shall mean the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election or defeat of any candidate. Personal services shall be considered a contribution in kind by the person paying compensation therefore. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used. *Contribution in kind* shall not include an endorsement of a candidate or an issue by any person and shall not include the payment of compensation for legal and accounting services rendered to a candidate, candidate committee, political committee or issue committee if the person paying for the services is the regular

employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this Article or other county state of federal requirements.

(f) *Expenditure* shall mean the payment, distribution, loan or advance of any money by any candidate committee, political committee or issue committee. *Expenditure* shall also include the payment, distribution, loan or advance of any money by a person for the benefit of a candidate committee, political committee or issue committee that is made with the prior knowledge and consent of an agent of the committee. An expenditure occurs when the actual payment is made or when there is a contractual agreement and the amount is determined.

(g) *Independent expenditure* shall mean the payment of money by any person for the purpose of advocating the election, defeat or recall of a candidate, which expenditure is not controlled by, or coordinated with, any candidate or any agent of such candidate. *Independent expenditure* shall include expenditures for political messages which unambiguously refer to any specific public office or candidate for such office, but shall not include expenditures made by persons, other than political committees, in the regular course and scope of their business and political messages sent solely to their members.

(h) *Issue committee* shall mean:

(1) Two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of accepting contributions and making expenditures to support or oppose any ballot issue or ballot question; or

(2) Any partnership, committee, association, corporation, labor organization or other organization or group of persons that has accepted contributions or made expenditures to support or oppose any ballot issue or ballot question. For purposes of this Paragraph (2), the term *expenditure* shall not include expenditures made by persons in the regular course and scope of their business or in connection with communications sent solely to their members. The term *expenditure* also does not include a contribution, as defined in this Section.

Issue committee shall not include political committees or candidate committees as otherwise defined in this Section.

(i) *Person* shall mean any individual, partnership, committee, association, or other organization or group of persons. *Person* shall not include corporations, labor unions or political parties.

(j) *Political committee* shall mean two (2) or more persons who are elected, appointed or chosen, or have associated themselves, for the purpose of making contributions to candidate committees, issue committees or other political committees, or for the purpose of making independent expenditures. *Political committee* shall not include:

- (1) Issue committees or candidate committees as otherwise defined in this Section; or
- (2) Any partnership, committee, association, corporation, labor organization or other organization or group of persons previously established for a primary purpose outside of the scope of this Article.
- (k) *Political message* shall mean a message delivered by telephone, any print or electronic media or other written material which advocates the election or defeat of any candidate or which unambiguously refers to such candidate.
- (l) *Termination report* shall mean a final report prepared by a candidate committee, issue committee or political committee and filed with the City Clerk which discloses the committee's contributions received, expenditures made and obligations entered into, when the following conditions have been met:
- (1) The committee no longer intends to receive contributions or make expenditures; and
- (2) A zero (0) balance exists in the account established and maintained under Subsection 17-5(g) and the committee has no outstanding debts or obligations.
- (m) *Unexpended campaign contributions* shall mean the balance of funds on hand in any candidate committee, issue committee or political committee following an election, less the amount of all unpaid monetary obligations incurred prior to the election.

SECTION 17-3 -- CANDIDATE AFFIDAVIT; DISCLOSURE STATEMENT; FAILURE TO FILE

- (a) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the City Clerk within ten (10) days, that the candidate is familiar with the provisions of this Article.
- (b) Each candidate shall file a financial disclosure statement pursuant to Municipal Code Section 2.14.010.I with the City Clerk within ten (10) days after filing acceptance of nomination.
- (c) Failure of any person to file the affidavit or disclosure statement required under this Section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the City Clerk has sent a notice to the person by certified mail, return receipt requested, addressed to the person's last known residence address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five (5) business days of receipt of the notice.
- (d) The requirements of this Section shall not apply to any elected official who is the subject of recall proceedings.

SECTION 17-4 -- REGISTRATION OF COMMITTEES

All candidate committees, political committees and issue committees shall register with the City Clerk before accepting or making any contributions. Such registrations may be amended as necessary. Registration shall include a statement listing:

- (1) The committee's full name, spelling out any acronyms used therein;
- (2) A natural person authorized to act as a registered agent;
- (3) A street address and telephone number for the principal place of operations; and
- (4) All affiliated candidates and committees;
- (5) The purpose or nature of interest of the committee.

SECTION 17-5 -- CAMPAIGN CONTRIBUTIONS

(a) *Limits.* No person may make contributions and/or contributions in kind totaling more than one hundred dollars (\$100.00) to the candidate committee of any candidate for the office of Mayor or for any position on the City Council. No person shall make a contribution or contribution in kind in the name of another person or knowingly permit one's name to be used by another person to effect such a contribution or contribution in kind. These limitations shall apply to all contributions or contributions in kind, whether made directly to a candidate committee or indirectly via earmarked gifts passed through an intermediary, except that these limitations shall not apply to:

- (1) Contributions or contributions in kind made by a candidate to his or her own candidate committee;
- (2) Independent expenditures; or
- (3) Monetary loans that are: (a) personally guaranteed in writing by the candidate or the candidate's immediate family, or (b) secured by real or personal property owned by the candidate or the candidate's immediate family.

(b) *Adjustment of limits.* At the beginning of each calendar year in those years ending in the numeral five (5) or the numeral zero (0), as there becomes available from the Bureau of Labor Statistics of The United States Department of Labor the necessary Consumer Price Index data, the City Clerk shall determine and the City Council approve, unless the City Clerk is determined by the City Council to have acted arbitrarily or capriciously, an adjustment to the limits set forth in Subsection (a) of this Section in proportion to the rise or fall of the Consumer Price Index since the last such adjustment or, in the case of 2010, since enactment of this Article.

If any such adjustment amount is not a multiple of five dollars (\$5.00) such amount shall be adjusted to the nearest multiple of five dollars (\$5.00).

Each amount so adjusted shall be in effect until the next adjustment.

(c) *Joint contributions.* No person shall make a contribution jointly with another person through the issuance of a check drawn on a jointly owned account unless: (i) the total amount of the joint contribution is less than the maximum amount that can be contributed by one (1) person under the contribution limits established in Subsection (a) of this Section or (ii) the check is signed by all owners of the account, in which event the amount of the total contribution shall be allocated equally among all such persons unless a different allocation is specified on the face of the check. No candidate committee, issue committee or political committee shall knowingly accept a contribution made in violation of this Subsection (b).

(d) *Contributions in excess of limits.* No later than ten (10) business days after receiving a contribution in excess of the limits set forth in this Section, the candidate committee that received the contribution shall remit the excess to the contributor.

(e) *Prohibited contributors.* No candidate committee or political committee shall knowingly accept contributions from any person who is not a citizen of the United States, or from a foreign government, corporation, labor union, or political party.

(f) *Contributions from one (1) candidate committee to another.*

(1) No candidate committee shall make a contribution or contribution in kind to, or accept a contribution or contribution in kind from, a candidate committee of another candidate.

(2) No candidate committee shall accept a contribution or contribution in kind from a candidate committee of the same candidate that was established or maintained for a federal, state or county election campaign or office.

(g) *Recordkeeping.* All contributions received by a candidate committee, issue committee or political committee shall be deposited and maintained in a financial institution in a separate account whose title shall include the name of the committee. All records pertaining to such accounts shall be maintained by the committee for ninety (90) days following any election in which the committee received contributions unless a complaint has been filed under Section 17-11 alleging a violation of the provisions of this Article, in which case they shall be maintained until final disposition of the complaint and any consequent court proceedings. Such records shall be subject to inspection at any hearing held pursuant to this Article.

(h) *Reimbursements prohibited.* No person shall make a contribution to a candidate committee, issue committee or political committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee or political committee, nor shall any person make

such reimbursement. An unexpended campaign contribution returned to a contributor by a candidate committee pursuant to Section 17-8 (a)(4) shall not be considered a reimbursement.

SECTION 17-6 -- DISCLOSURE; FILING OF REPORTS

(a) All candidate committees, political committees and issue committees shall report to the City Clerk their contributions and contributions in kind received, including the name, address, occupation and employer of each person who has made contributions or contributions in kind in the amount equal to or greater than twenty dollars (\$20.00) or more; expenditures made; and obligations entered into by the committee.

(b) For purposes of complying with the requirements of this Section, an issue committee consisting of an organization whose primary purpose is not to support or oppose ballot issues shall report only those contributions accepted, expenditures made and obligations entered into for the purpose of supporting or opposing a ballot issue or ballot question. Such issue committee shall not be required to report donations, membership dues or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question.

(c) Reports shall be filed with the City Clerk on the twenty-first day, fourteenth day, and on the Friday before the election, thirty (30) days after the election, and annually on the first day of the month in which the anniversary of the election occurs until such time as a termination report is filed. If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(d) The reports required by this Section shall include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period and the name and address of the financial institution used by the committee or party.

(e) All reports shall be submitted on forms provided by the City Clerk and shall be complete in all respects. Reports shall be current in all respects as of two (2) days prior to the date upon which each such report is to be filed.

(f) A report required to be filed by this Article is timely if the original report is received by the City Clerk not later than the close of business on the due date or if a copy of the report is filed by fax on or before the date due and the original report is filed not later than the close of business on the next business day. For the purpose of this provision, the *original report* shall mean a copy containing an original signature of the person completing the report.

(g) Any report that is deemed by the City Clerk to be incomplete or inconsistent with the requirements of this Article shall be accepted on a conditional basis, and the committee treasurer shall be notified in writing as to any deficiencies found. Such notice may be delivered in person, by mail, by fax, or, if an

electronic mail address is on file with the City Clerk, by electronic mail. The committee treasurer shall have seven (7) business days from the date of delivery of such notice to file an amended report that cures the deficiencies. Any such amended report shall supersede the original report filed for the reporting period.

(h) Any candidate committee, political committee or issue committee which has not accepted any contributions or contributions in kind, made any expenditures, or entered into any obligations during a reporting period, shall file a report with the City Clerk on the days specified in Subparagraph (c) above certifying that the committee has not accepted any contributions or contributions in kind, made any expenditures or entered into any obligations during the relevant reporting period.

SECTION 17-7 -- REPORTS TO BE PUBLIC RECORD

(a) Upon receipt of any campaign report submitted pursuant to this Article, the City Clerk shall make available such report for public inspection. The campaign report filed with the City Clerk fourteen (14) days prior to the election pursuant to Section 17-6 above shall be posted by the City Clerk on the city's official website in a manner that makes it easily identifiable, which posting shall occur no less than seven (7) days prior to the election. The campaign report filed with the City Clerk thirty (30) days after the election pursuant to Section 17-6 above shall also be posted on the city's official website by the City Clerk, which publication shall occur no more than seven (7) days after the City Clerk's receipt of the report.

(b) No information contained in any campaign report submitted pursuant to this Article shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

SECTION 17-8 -- UNEXPENDED CAMPAIGN CONTRIBUTIONS

(a) Unexpended campaign contributions to a candidate committee may be:

- (1) Contributed to a political party;
- (2) Contributed to a candidate committee established by the same candidate for a subsequent campaign for the same office, subject to the limitations set forth in Section 17-5(e), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten (10) days after the date such a contribution is made;
- (3) Donated to a charitable organization recognized by the Internal Revenue Service; or
- (4) Returned to the contributors.

In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election or retention of the candidate.

(b) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in Subsection (a) of this Section, no later than one (1) year from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(c) Unexpended contributions to an issue committee or political committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

SECTION 17-9 -- INDEPENDENT EXPENDITURES

Any person or political committee making independent expenditures totaling more than one hundred dollars (\$100.00) shall deliver notice in writing of such independent expenditures to the City Clerk no later than three (3) business days after the day that such funds are obligated. Said notice shall include the following information:

- (1) The name, address, telephone number, occupation and employer of the person making the independent expenditures;
- (2) The name of the candidate(s) whom the independent expenditures are intended to support or oppose;
- (3) The name and address of the vendor(s) providing the property, materials or services;
- (4) A detailed description of the independent expenditures;
- (5) The amount of the independent expenditures; and
- (6) The date the funds were obligated.

For the purposes of this provision, funds shall be considered to have been obligated as soon as an agreement is reached for the provision of the property, materials or services in question, regardless of when payment is to be made for such property or services.

SECTION 17-10 -- DUTIES OF CITY CLERK

The City Clerk shall:

- (1) Prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this Article;
- (2) Develop a filing and indexing system consistent with the purposes of this Article;

- (3) Keep a copy of any report or statement required to be filed by this Article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one (1) year after the candidate leaves office;
- (4) Make reports and statements filed under this Article available for public inspection and copying no later than the end of the next business day after the date of filing;
- (5) Upon request by the Secretary of State, transmit records and statements filed under this Article to the Secretary of State;
- (6) Notify any person who has failed to fully comply with the provisions of this Article; and
- (7) Report apparent violations of this Article to the City Manager.

SECTION 17-11 -- VIOLATIONS PROCEDURES AND PENALTIES

- (a) Any person who knowingly violates or fails to comply with any of the provisions of this Article commits a misdemeanor and is subject to a fine or imprisonment in accordance with ordinances adopted by the City Council pursuant to Section 4-14.
- (b) Failure to comply with the provisions of this Article shall have no effect on the validity of any election.

SECTION 17-12 -- SEVERABILITY

If any provision of this Article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

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