

**To:** Petitioner Representatives and Protesters

**From:** Jay Robb, Lakewood City Clerk

**Re:** Protest Hearing on Protests to Referendum Petitions to Ord. 2025-27, 2025-28 and 2025-29

### **Notice of Hearing**

A hearing concerning the above-referenced protests, as provided for in Section 2.52.150 (D) of the Lakewood Municipal Code (the Code), will be held at **9:00 am on Friday, December 19, 2025**. The Hearing will be held in the Lakewood City Council Chambers at 480 S. Allison Parkway, Lakewood, Colorado 80226. I will be assisted throughout the course of this matter and at the Hearing by Special Counsel Geoff Wilson.

***Administrative Hearing Procedures.*** I will conduct this administrative hearing as provided in the City of Lakewood's "Administrative Hearing Procedure", adopted pursuant to Sec.2.52.010 of the Code,12/01/2025. These Procedures expressly distinguish administrative hearings, such as we will be having in this case, from more formal "judicial" hearings, noting that administrative hearing rules are "more relaxed." A copy of the City's hearing procedures is attached for your convenience. Please familiarize yourself with these procedures ahead of the Hearing.

Counsel for Protesters suggests a number of procedures and limitations on the hearing beyond those provided in the City's adopted hearing procedures (quasi-judicial process, limits on ex parte communications, role of the City Attorney, etc.). I appreciate these suggestions (indeed, several of Protester's suggestions, such as making of an electronic record, are already part of the City's procedures); however, I will not be modifying the City's current hearing procedures to impose a quasi-judicial limit in this referendum signature protest proceeding, in the absence of provision for such a unique limit in the City's formal procedures. We know of nothing in Colorado statutes or case law directing that that referendum signature protest hearings be conducted as quasi-judicial matters, and Protesters direct me to no Colorado legal authority in support of their position.

This hearing is solely for the purpose of receiving evidence relating to the sufficiency of signatures on particular referendum petitions, and the sufficiency of the attached affidavits. I will cut off testimony that does not address one of these two matters.

## **Pre-Hearing Filings; Lists of Witnesses**

Protesters have filed their Protests and copies of the Protests have been provided to Petitioner Representatives.

***Additional Documentary Material:*** Should Protesters or the Petitioners (by these terms, I include their respective counsel) wish to file statements, responses or additional other documentary material with the City Clerk, please do so **by end-of-day Monday, December 15<sup>th</sup>**, so that we may share this material with all parties.

***List of Witnesses:*** Should Protesters or Petitioners intend to call witnesses for this hearing, please provide a list of such witnesses and a description of the witnesses' proposed testimony to the City Clerk **by end-of-day Friday, December 12<sup>th</sup>**.

## **At the Hearing**

*The Hearing will be public.* The public is welcome, and may observe, but no public comment will be taken. Disruptive behavior, such as outbursts from the audience, will not be tolerated.

***Object of the Hearing.*** The purpose of this hearing on a signature/affidavit protest is to protest a prior determination of the City Clerk, here the determination that the petitions at issue contained sufficient valid signatures. The Protester thus seeks to show that a sufficient number of signatures counted as valid by the Clerk should have been disallowed on various basis, including defects in the circulator's affidavit. Accordingly, relevant testimony at the December 19<sup>th</sup> Hearing should relate to one of the following two questions:

- 1) Were signatures accepted by the Clerk that should have been disallowed?
- 2) Were there flaws in the circulator's affidavits sufficient to warrant disallowing the attached petition section?

*The purpose of testimony at the Hearing* is to supplement the documentary materials provided to the Hearing Officer by the Protesters and Petition Representatives, which bear on the foregoing two questions. Here, the Protesters have submitted extensive materials setting forth with particularity the names on petitions that are protested as well as detailing their affidavit objections. It is common that, prior to the Hearing, both sides submit various documentary materials to the Hearing Officer, who shares the materials with both sides (see the submission deadline above). So: the purpose of hearing is *not* to rehash and repeat at length what is said in the documentary materials, but to add to or elaborate that material.

Sometimes, the Respondents – here, the Petition Representatives – choose (and it is completely their choice, of course) to say little or nothing at the Hearing. This is because

the burden is on the Protesters to make their case; and they have the burden of proving it by a preponderance of the evidence, which Protesters must present. Respondents may rebut Protesters, but Respondents have no burden to prove anything.

Likewise, Protesters understand that they have the burden of proof, and consequently, as a rule, have (as in this case) submitted highly detailed documentary materials supporting their protest *ahead* of the Hearing. As a result, because the documentary materials are so central to resolving the Protest, it is not uncommon for Protesters to have little to add at the Hearing itself. Again, this is entirely the Protesters' choice.

All that said, the City's Hearing Procedures afford both sides an opportunity to be heard in this matter, beginning with your brief opening statements, as directed in Para. 4, D, (4) of those Procedures.

Thank you.

A handwritten signature in blue ink, appearing to read "Jay Robb". The signature is fluid and cursive, with the first name "Jay" and the last name "Robb" clearly distinguishable.

Jay Robb, Lakewood City Clerk

**ADMINISTRATIVE HEARING PROCEDURE**

**CHAPTER 2.52 – LAKEWOOD MUNICIPAL CODE**

**Rule Promulgated per L.M.C. 2.52.010**

1. Applicability of Procedures

In addition to any other applicable rules and laws, these Procedures shall govern all administrative hearings held pursuant to Chapter 2.52 of the Lakewood Municipal Code. An administrative hearing is a proceeding before an administrative agency/administrative official. Administrative hearings follow administrative procedures rather than judicial procedures, and permit a more relaxed application of the rules of civil procedure and rules of evidence to allow members of the public to represent their own interests if they choose.

2. Effective Date

The effective date of these Procedures shall be December 1, 2025.

3. Notice Provisions.

The City Clerk shall mail a copy of such protest to the petition representative, together with a notice fixing a time for hearing such protest not less than five nor more than 20 days after such notice is mailed. **L.M.C. 2.52.090(D) (initiative petitions) and L.M.C. 2.52.150(D) (referendum petitions).**

The City Clerk shall effect public notice for any protest hearings, with a physical copy of the notice posted in the atrium of 480 S. Allison Pkwy, and an electronic notice posted on Lakewood Speaks. Each posting shall be made at least 24 hours before the hearing.

4. General Hearing Rules and Procedures

A. **Scheduling.** Hearing dates shall be set pursuant to the process provided for in sections 2.52.090(D) (initiative petitions) and 2.52.150(D) (referendum petitions) of the Lakewood Municipal Code. In conformance with C.R.S. 31-11-110(3), all protest hearings shall be concluded within sixty days after an initiative or referendum petition has been filed with the City Clerk.

B. **Personal Appearance.** Hearings shall be held in the Lakewood City Council Chambers. The party appealing the initial sufficiency determination by protest (Appellant), and their legal counsel (if any), and the Petition Representatives who shall serve as the party in support of the initial sufficiency determination (Respondent), and their legal counsel (if any), shall be required to appear in person for all hearings. Witnesses may be allowed to appear virtually at the discretion of the

Administrative Hearing Officer (Hearing Officer) if available technology supports virtual appearance.

- C. **Electronic Record.** All initiative or referendum protest hearings shall be electronically recorded to capture the audio of such hearings.
- D. **General Procedures.** The following general procedures shall apply to initiative or referendum protest hearings:
- 1) **Call to Order.** The hearing shall begin with the Hearing Officer calling the hearing to order and stating the date and the time the hearing began.
  - 2) **Statement of Scope of Administrative Hearing.** The Hearing Officer will state the scope of the hearing, the rules of the hearing, the purpose of the hearing and any further legal or administrative statements the Hearing Officer deems appropriate.
  - 3) **Introduction of Parties.** The party appealing the initial sufficiency determination by protest shall be identified as the Appellant, and the Petition Representatives acting in support of the initial sufficiency determination shall be identified as the Respondent. The Hearing Officer shall ask each party to introduce themselves and for any legal representatives to enter their appearances.
  - 4) **Presentation of Cases.** The Appellant shall present a brief Opening Argument that sets forth their legal position as to the sufficiency of the petitions. The Respondent shall then present their Opening Argument that sets forth their legal position as to the sufficiency of the petitions. Due to the administrative nature of the case, both parties shall provide their Opening Arguments in advance of either party presenting evidence to allow the Hearing Officer to better understand the legal positions of both parties.

The Appellant shall present their case first. After conclusion of the Appellants' case the Respondents shall proceed with their case. Both the Appellant and Respondent shall be authorized to call witnesses and present exhibits during their case in chief. Both parties shall have the right to cross-examine witnesses called by the opposing party and both parties shall have the right to re-direct following any cross-examination. Both parties may object to evidence presented based upon relevancy and authenticity. The Hearing Officer may allow the introduction of evidence with questionable relevancy and authenticity but shall give such evidence the weight/value it deserves based upon believability or persuasiveness.

The parties may call witnesses as they deem necessary to testify under oath regarding any relevant evidence relating to petition sufficiency or insufficiency.

- 5) **Authority of the Hearing Officer.** At the conclusion of a witness' testimony, both direct and cross, the Hearing Officer may ask any witness any question concerning their testimony. The parties shall be invited to redirect/recross based upon the responses provided by a witness to a question presented by the Hearing Officer.

The Hearing Officer shall have the discretion to call other interested persons to give testimony if the Hearing Officer determines that such individuals are able to testify to relevant information deemed necessary by the Hearing Officer and such information is not available from either party to the proceeding. Both parties shall have the right to object and make argument regarding the admissibility of the testimony and/or exhibits to be offered by other individuals called by the Hearing Officer. The parties shall have the right to cross-examine any individual the Hearing Officer permits to give testimony. The foregoing shall not be interpreted as authorizing general public comment during the hearing.

- 6) **Closing Arguments.** After all testimony and exhibits have been entered, the parties may make closing arguments. The Appellants shall give their closing arguments first, followed by the Respondents. The Hearing Officer may limit the time each party is given for closing arguments, but in no event shall the parties be given less than thirty minutes each for closing arguments.
- 7) **Burden of Proof.** The Appellants shall bear the burden of proof and must prove each allegation of petition insufficiency by a preponderance of the evidence. **L.M.C. 2.52.090(E) (initiative petitions) and L.M.C. 2.52.150(E) (referendum petitions).**
- 8) **Decision.** All protest hearings shall be concluded within sixty days after an initiative or referendum petition has been filed with the City Clerk. The City Clerk acting as Hearing Officer shall provide a written finding within five (5) days following the conclusion of a protest hearing but shall strive to have all elements of the hearing, including a written decision, completed within the timeframe set forth within State law. **C.R.S. §31-11-110(3).**
- 9) **Appeal.** The decision of the City Clerk is final. Any appeal of the decision shall be to Jefferson County District Court. **L.M.C. 2.52.090(F) (initiative petitions) and 2.52.150(F) (referendum petitions).**

5. POSSIBLE DECISIONS.

After the close of the administrative hearing, the City Clerk will make a determination as to whether the Appellant has met the burden of proof to show that one or more names included in support of such petition is invalid. Such decision shall be in conformance with L.M.C. 2.52.090(A) (initiative petitions) and L.M.C. 2.52.150(A) (referendum petitions).

If enough names are found to be invalid so as to change the City Clerk's initial determination that the petition had sufficient valid signatures to a finding that the petition has an insufficient number of valid signatures, the City Clerk shall mail a written decision and notice of insufficiency summarizing the grounds for the decision, to the Respondent and to the Appellant. The decision of the City Clerk shall be final.

If there are not enough names found to be invalid so as to change the City clerk's initial determination of sufficiency, the City Clerk shall mail a written decision and notice of sufficiency summarizing the grounds for the decision, to the Respondent and to the Appellant. The decision of the City Clerk shall be final.

6. ADDITIONAL HEARING INFORMATION.

- A. **Exhibits.** The Appellants shall **pre-number** their exhibits serially and shall bring to the hearing two copies of any exhibits that can be printed on paper so as to provide one for the Hearing Officer and one for the Respondents. The Respondents shall **pre-letter** their exhibits serially and shall bring to the hearing two copies of any exhibits that can be printed on paper so as to provide one for the Hearing Officer and one for the Appellants.
- B. **Subpoena Authority.** The City Clerk shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. Upon failure of any witness to obey the subpoena, the City Clerk may petition the District Court of Jefferson County and upon proper showing the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of the court is punishable as a contempt of court. **L.M.C. 2.52.090(E) (initiative petitions) and L.M.C. 2.52.150(E) (referendum petitions).**
- C. **Continuances.** Due to the time-sensitive nature of the sufficiency review process, continuances shall generally not be authorized. However, in exceptional circumstances, either party may submit a motion for a continuance to the Hearing Officer if such request precedes the date of the hearing by a minimum of three (3) days. The Hearing Officer shall provide a copy of the motion to the non-moving party within the same business day the Hearing Officer receives the motion. The non-moving party shall be allowed to provide a written response to the Hearing Officer by the end of the next business day following receipt of such motion. The Hearing Officer shall provide a written decision on the motion by the end of the next business day

following receipt of the non-moving party's response. In the event a motion to continue is filed too closely in time to the hearing date to allow for the foregoing timeline, the hearing officer shall hold either a telephonic, virtual or in-person conference with the Appellants and Respondents regarding the motion as soon as possible.

- D. **Length of Hearing.** Protest hearings shall be set for a single day. In exceptional circumstances, hearings may proceed beyond a single day with the expectation that if a hearing cannot be concluded on the first day it is held it shall be resumed on the following business day.
- E. **Unaddressed Hearing Procedures.** Any administrative hearing procedure not addressed in local or State law, or established herein, shall be determined at the discretion of the Hearing Officer.

7. **ADMINISTRATIVE HEARINGS OPEN TO PUBLIC.**

- A. **Administrative Hearings Designated as Public.** Members of the general public shall be allowed to attend and observe all administrative hearings regarding protests of an initial sufficiency determination. **L.M.C. 2.52.090(E) (initiative petitions) and L.M.C. 2.52.150(E) (referendum petitions).**
- B. **No Public Comment.** The Hearing Officer shall not authorize any general public comment during or after the hearing.
- C. **Hearing Officer Shall Control Decorum.** Any members of the general public who fail to follow general rules of hearing decorum shall be asked to leave, and the Hearing Officer may recess the meeting until such person(s) leaves the chambers.

APPROVED AND ACCEPTED BY:

  
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Jay Robb, City Clerk

  
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Date

