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August 16, 2013

Jim F. Candelarie  
City and County Clerk  
1 DesCombes Drive  
Broomfield, CO 80020

William A. Tuthill III  
City and County Attorney  
1 DesCombes Drive  
Broomfield, CO 80020

RE: Official Protest of Setting of Ballot Title

Dear Mr. Candelarie and Mr. Tuthill,

This letter forms an official Protest of the actions of the City of Broomfield City Clerk, City Attorney and/or City Council in the setting of the ballot-title language on Tuesday, August 13, 2013. The Protestor, Our Broomfield, requests that the City Council modify the language of the ballot title to conform to state and local law.

The Broomfield City Charter provides that petitions to propose charter amendments be governed by the Colorado Municipal Home Rule Act of 1971 ("Home Rule Act"). The Home Rule Act requires that the Ballot Title of a proposed charter amendment be "a brief statement that **fairly and accurately represents the true intent and meaning of the proposed initiative.**" C.R.S. § 31-11-103(1) (emphasis added); C.R.S. § 31-2-203(1) ("Ballot title" means a ballot title as defined in section 31-11-103(1).").

The Ballot Title adopted by the City Council at its August 13, 2013 meeting does not meet the City Council's legal obligation. The language adopted skews the purpose of Our Broomfield's Proposed Charter Amendment by suggesting that its intent is to place restrictions on the private property interests of mineral rights owners, and thus does not "fairly and accurately" represent the "true intent and meaning" of the Proposed Charter Amendment. The Proposed Charter Amendment's real intended purpose—which was made clear to those who signed the petition to place it on the ballot—is to protect the

public health, safety, and welfare of the citizens of Broomfield. While the Proposed Charter Amendment does seek to ensure that hydraulic fracturing is prohibited within the City, it does so **not to curtail property rights of mineral owners**, but to ensure that the people of Broomfield’s health, welfare, and private property is protected.

Our Broomfield’s Proposed Charter Amendment emphasizes public health and the rights of citizens to be protected from polluting activities in their communities. The rights of the people affected—such as the rights of surface owners—are not mentioned in the Ballot Title. By only focusing on the rights of mineral owners, the City Council has not adopted ballot language that conforms to the Home Rule Act’s requirements.

Moreover, the Ballot Title makes unfounded legal conclusions regarding the property interests of mineral developers. The fact is that the Colorado courts have not yet determined that the proposed law (or others like it already passed by Colorado municipalities) unduly infringes on mineral property rights, or that the restrictions on wastewater storage are more restrictive than state regulations. It is certainly not the duty of the City Clerk, City Attorney, or City Council to take away the rights of the people of Broomfield to pass an amendment fairly aimed at protecting public health and welfare from hydraulic fracturing **by making a legal determination that rests with the courts**. And it is also both unfair and **unlawful** for the City Clerk, City Attorney, or City Council to skew the Ballot Title to reflect their premature legal opinion in an attempt to persuade the citizens of Broomfield to not vote for the amendment.

Further, the Home Rule Act provides that, it is unlawful “for any person to do willfully any act in reviewing the petition or **setting the ballot title which shall confuse or tend to confuse the issues submitted** or proposed to be submitted at any election held under this part 2.” C.R.S. § 31-2-225(1)(f) (emphasis added). Any person who violates this provision “commits a class 2 misdemeanor and shall be punished” by up to twelve months imprisonment and/or a fine of up to \$1,000. C.R.S. § 31-2-225(2); C.R.S § 18-1.3-501. If the City Council does not modify the ballot language to conform to the stated requirement, we will make a request that the Colorado Attorney General investigate this potential violation. Our Broomfield will also seek judicial review of the City’s setting of the Ballot Title under Colorado Rule of Civil Procedure 106.

To avoid further argument over the Ballot Title of the Proposed Charter Amendment, Our Broomfield requests that the City Council adopt a more accurate and reasonable title. Our Broomfield suggests:

Shall Broomfield’s Home Rule Charter be amended for five years so as to prohibit the use of hydraulic fracturing (fracking) to extract oil, gas, or other hydrocarbons within the City and County of Broomfield and to prohibit the disposal or open pit storage of solid

or liquid wastes created in connection with the hydraulic fracturing process in order to protect property, property values, public safety, welfare, and the environment?

Due to the time-sensitive nature of this ballot issue, your prompt attention to this matter is requested by this Protest.

Sincerely,

/s/ Kelly D. Davis

Kelly D. Davis

Clinical Fellow

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*On behalf of Our Broomfield*