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ADVANCE SHEET HEADNOTE
June 15, 2026

2026 CO 47

No. 24SC522, *Kavanaugh v. Telluride Locs. Coal. Petitioners' Comm.*—Planned Unit Development Act of 1972—Election Law—Initiative and Referendum

This case requires the supreme court to consider how the citizen initiative power may be used with respect to planned unit developments ("PUDs") under Colorado's Planned Unit Development Act, §§ 24-67-101 to -108, C.R.S. (2025). The court has long held that the initiative power is limited to legislative acts and does not extend to administrative acts. Legislative acts are those which establish generally applicable rules based on broad policy grounds. Administrative acts, by contrast, are based on individualized, case-specific considerations, or are necessary to carry out existing legislative policies and purposes.

Applying these principles, the court concludes that the proposed initiative at issue, which sought to amend an existing PUD agreement, is administrative in character and thus is not subject to the initiative process. The court accordingly reverses the judgment of the court of appeals and remands the case to the district

court for consideration of the reasonableness of the Town of Telluride's request for attorney fees.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 47

Supreme Court Case No. 24SC522
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 23CA1035

Petitioner:

Tiffany Kavanaugh in her official capacity as Telluride Town Clerk,

v.

Respondents:

Telluride Locals Coalition Petitioners' Committee; Matthew Hintermeister; Ian Wilson; Daniel Aurand; and Brighton Properties, LLC, a Colorado limited liability company.

Judgment Reversed
en banc
June 15, 2026

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BLANCO** joined.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 The Colorado Constitution vests the legislative power of the state in the General Assembly, but it reserves to the people the power to propose laws independent of the General Assembly by initiative. Colo. Const. art. V, § 1; *Vagneur v. City of Aspen*, 2013 CO 13, ¶ 35, 295 P.3d 493, 504.

¶2 In this case, we consider how the citizen initiative power may be used with respect to planned unit developments ("PUDs"). Specifically, we consider whether Brighton Properties, LLC ("Brighton"), the original developer of the Butcher Creek PUD in Telluride—which still owns a single lot within the PUD, and a coalition of local petitioners may modify the terms of the Butcher Creek PUD Agreement ("the PUD Agreement") by initiative rather than by amendment.[1] After considering the statutorily prescribed method for enabling, creating, and changing a PUD agreement, we conclude that the initiative power may not be used to amend such an agreement. We therefore conclude that Brighton's proposed initiative, which concerned rezoning the single lot within the PUD that it still owns, is not legislative in character and thus is not subject to initiative. Accordingly, we reverse and remand the case to the court of appeals with

[1] Though Brighton and the other petitioners are distinct parties, they joined the same briefs on appeal below and before this court. Thus, for brevity, we refer to these parties as "Brighton."

directions to remand it to the district court for consideration of the reasonableness of the Town of Telluride's ("the Town") request for attorney fees.

I. Facts and Procedural History

¶3 In 1995, pursuant to Colorado's Planned Unit Development Act ("PUD Act"), §§ 24-67-101 to -108, C.R.S. (2025), the Town approved Butcher Creek, a PUD proposed by Brighton. At the time of its approval, the Town's PUD enabling ordinance required a PUD application to meet certain specialized land use requirements. The proposed plan had to conform with the Town's master plan, mitigate geological and flood hazards, demonstrate that proposed future or existing transportation systems would serve the plan, and prove that the plan's site design accommodated existing view corridors and open space. Town of Telluride, Colo., Land Use Code, art. VI, div. 3, § 6-313.

¶4 As part of the approval process, Brighton and the Town entered into the PUD Agreement. The Agreement bound both parties to the conditions of approval; set out the zoning restrictions of eighteen specific lots; and set aside Lot A, which was designated as a common open space due to the steep slopes on its northern boundary. The PUD Agreement also contained an "[a]mendments" clause, stating that it could not be modified unless all parties (the Town, Brighton, and any of their successors) consented. Between 1995 and 2018, Brighton sought

seven amendments to the PUD Agreement. Each time, Brighton sought to modify the Agreement in a manner consistent with its rules and procedures.

¶5 By 2018, Brighton had sold all the lots in the PUD except Lot A. That year, Brighton proposed an eighth amendment, one that would amend part of Lot A's designation as open space so Brighton could construct affordable housing on the southern portion of the lot. The Town declined the proposal because Brighton had not obtained the consent of all owners within the PUD, as required by the amendments clause.

¶6 In 2019, still seeking to develop Lot A, Brighton proposed a ballot initiative—amending the PUD Agreement to rezone Lot A—to allow for development of the lot. The Town rejected this proposed initiative on two grounds. First, it found that the proposal involved administrative or quasi-judicial matters and was not proper for a ballot initiative under *Vagneur*. Second, the Town reasoned that granting Brighton's request for the ballot proposal would violate the statutory process for amending PUDs.

¶7 Brighton filed suit, seeking, among other things, a declaration that its rezoning initiative was legislative in character and thus the proper subject for a ballot initiative. Both parties subsequently filed motions for summary judgment. Brighton argued, in pertinent part, that the initiative constituted a legislative action subject to the initiative process. The Town argued, by contrast, that

amending the PUD Agreement constituted an administrative action, and consequently was not subject to the initiative.

¶8 The district court denied Brighton's motion. In doing so, it pointed to section 24-67-106(3)(b), C.R.S. (2025), which requires a locality to first provide notice and a public hearing before amending a PUD agreement. The court reasoned that the proposed subject of the initiative was quasi-judicial, not legislative, making summary judgment improper. Further, the court noted that the PUD Agreement, which required the Town's consent to any amendment, was a binding contract.

¶9 The district court simultaneously granted the Town's motion for summary judgment on similar grounds. The court explained that because the PUD Agreement could be amended, it was not "of a permanent or general nature," and because it applied only to one lot, it did not "declare a new public policy." Once again, the district court concluded that the proposed amendment was not legislative in character and was thus improper for a ballot initiative.

¶10 Brighton appealed and a division of the court of appeals reversed. *Telluride Locs. Coal. Petitioners' Comm. v. Kavannaugh*, 2024 COA 69, ¶ 50, 557 P.3d 381, 392.[2] Relying heavily on *Margolis v. District Court*, 638 P.2d 297 (Colo. 1981), the division

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[2] Consistent with the briefing before this court, we spell the Telluride Town Clerk's last name—Kavanaugh—with one "n." Below it was spelled with two.

held that zoning and rezoning "have long been considered legislative matters subject to the initiative power" and that "a PUD is a form of zoning or rezoning." *Telluride*, ¶ 17, 557 P.3d at 386; *see also Margolis*, 638 P.2d at 303–04 ("*[O]riginal* zoning decisions are legislative in character . . . ." (emphasis added)). The division then concluded that the ordinance was legislative because (1) the *original* PUD constituted a permanent zoning decision, which was a legislative action; (2) the ordinance declared a new public policy regarding the use of Lot A; and (3) the initiative served to amend an initial legislative action. *Telluride*, ¶¶ 26–27, 557 P.3d at 388.

¶11 We granted the Town's petition for certiorari review.[3]

II. Analysis

¶12 The Town now reiterates its argument that amendments to PUD agreements are not legislative in character and thus are not subject to the initiative process. It

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[3] We granted certiorari to review the following issues:

1. Whether the court of appeals correctly applied this court's opinion in *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013), where the court held that government land use decisions subject to complex or specialized expertise are not ordinarily subject to the power of citizen initiatives.
2. Whether Colorado's Planned Unit Development Act of 1972, sections 24-67-101 to -108, C.R.S. (2024) ("PUD Act"), which delegates regulation of planned unit developments to municipalities, can be overridden by the power of initiative.

contends that although the Town's passage of the PUD enabling ordinance constituted legislative activity, it is the only act in the three-step PUD process that is legislative in character. The Town argues that an amendment to an existing PUD agreement is administrative in character because it is not of a general or permanent nature. Such an amendment, it posits, merely modifies a PUD agreement according to the legislative goals already set out in a PUD enabling ordinance. An amendment to a PUD agreement thus is not subject to initiative. In the Town's view, permitting an initiative in this case would allow Brighton to invade the Town's administrative authority. We agree.

¶13 We begin our analysis by reviewing Colorado's PUD Act and summarizing the three steps required to create and amend a PUD. We then examine the initiative process and relevant standard of review for determining whether a proposed initiative is a proper subject of the citizens' power to propose laws independent of the General Assembly. We do so by asking whether an initiative is legislative in nature—and thus a proper exercise of the initiative power—or, conversely, whether an act is administrative or quasi-judicial in nature and thus not a proper exercise of the initiative power. We analyze this question through the lens of our prior case law. Then, we turn to Brighton's proposed initiative and conclude that it is administrative in character and thus not a proper exercise of the initiative process.

A. Colorado's PUD Act

¶14 The General Assembly passed Colorado's PUD Act in response to recognized shortcomings in traditional Euclidian zoning. *Tri-State Generation & Transmission Co. v. City of Thornton*, 647 P.2d 670, 677 (Colo. 1982); *see* §§ 24-67-101 to -108. Euclidian zoning[4] prescribes fixed uses and requirements to a specified area, separating theoretically incompatible land uses by establishing rigid legislative rules. *Euclidean Zoning*, Merriam-Webster Dictionary, https://www.merriam-webster.com/legal/Euclidean%20zoning [https://perma.cc/7FHV-ELPJ] ("Euclidean zoning [is] a system of zoning whereby a town or community is divided into areas in which specific uses of land are permitted."); *Campion v. Bd. of Aldermen*, 899 A.2d 542, 560–61 (Conn. 2006) (explaining that Euclidean zoning is designed to achieve stability in land use planning and zoning and is a comparatively inflexible, self-executing mechanism).

¶15 A PUD is a more flexible zoning mechanism. It allows a municipality[5] to control the development of individual tracts of land by specifying the

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[4] The term "Euclidian zoning" comes from *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 396 (1926). There, the Supreme Court upheld the constitutionality of a zoning scheme that excluded apartments and commercial uses from a single-family residential district. *Id.* at 397.

[5] The PUD Act applies to municipalities and counties. § 24-67-102(1), C.R.S. (2025). Because this case concerns the Town, we focus on the Act as it concerns municipalities, though our reasoning here extends to counties as well.

development permitted within each tract in accordance with the municipality's PUD enabling ordinance. *Tri-State Generation*, 647 P.2d at 677. Consequently, a PUD grants municipalities "the flexibility necessary to permit adjustment to changing needs, and the ability to provide for more compatible and effective development patterns within a city." *Id.* at 677–78. Indeed, section 24-67-102(1)(i), C.R.S. (2025), of the PUD Act allows municipalities to "relate the type, design, and layout of residential, commercial, and industrial development to the particular site, thereby encouraging preservation of the site's natural characteristics."

¶16 The PUD Act sets out a three-step process for creating and amending PUDs: (1) the passage of a PUD enabling ordinance; (2) the evaluation of each PUD application to determine if it meets the criteria set forth in the enabling ordinance (which, if approved, leads to the creation of a PUD and PUD agreement); and (3) the amendment, if desired, of the PUD agreement. We discuss each of these steps in turn.

¶17 First, before creating a PUD, a municipality must pass a PUD enabling ordinance. The enabling ordinance must set forth the general development standards with which a PUD must comply. § 24-67-104. For instance, it must include the permitted density or intensity of land use, minimum number of units or acres required, and the sequence of development. § 24-67-105(1)–(5), C.R.S.

(2025). These standards establish the criteria the municipality will apply in evaluating subsequent PUD applications. *See* § 24-67-104(1)(a)–(f), C.R.S. (2025).

¶18 Next, the municipality evaluates each PUD application it receives against these prescribed standards. *See* §§ 24-67-104, -105. A governing body designated by the enabling ordinance reviews PUD applications and, if needed, introduces certain conditions for approval. § 24-67-104(1)(b). The body approves those applications which are compliant with the enabling ordinance and the municipality and applicant enter into a PUD agreement—ultimately creating a PUD. § 24-67-104.

¶19 Finally, if desired, a PUD agreement may be amended so long as the changes comply with the procedure set forth in the PUD Act. Specifically, the PUD Act prohibits any "substantial modification, removal, or release of the provisions of the plan" except if, after a public hearing, the amendment meets certain statutory criteria. § 24-67-106(3)(b). For instance, the amendment must be consistent with the entire existing PUD and must not substantially harm either the enjoyment of abutting properties or the public interest. *See Whatley v. Summit Cnty. Bd. of Cnty. Comm'rs*, 77 P.3d 793, 803 (Colo. App. 2003).

B. The Initiative Process

¶20 Article III of the Colorado Constitution provides for the separation of powers among the branches of Colorado's government. The legislative, executive,

and judicial branches of government may exercise only their own respective powers. Colo. Const. art. III; *People v. Barth*, 981 P.2d 1102, 1105 (Colo. App. 1999). No branch may usurp the powers of another. *See Vagneur*, ¶ 34, 295 P.3d at 503–04.

¶21 The Colorado Constitution vests the legislative power in the General Assembly but reserves the power of initiative to the people. Colo. Const. art. V, § 1(1)–(2). As noted, the people's power of initiative is the power to propose laws independent of the General Assembly. *Id.* We have long construed this power to vest only legislative power in the people because article V deals only with the legislative branch. *Vagneur*, ¶ 36, 295 P.3d at 504. Accordingly, the initiative power applies only to acts that are "legislative in character." *City of Aurora v. Zwerdlinger*, 571 P.2d 1074, 1076 (Colo. 1977). For that reason, based on separation of powers principles, the initiative power does not extend to acts that are administrative or quasi-judicial. *Vagneur*, ¶ 36, 295 P.3d at 504.

¶22 We review de novo whether a particular citizen initiative is legislative in character, and thus a proper exercise of the initiative power. *Id.* at ¶ 32, 295 P.3d at 503. We have acknowledged that determining whether an initiative is legislative is a difficult question to answer, especially at the municipal level. *Id.* at ¶ 38, 295 P.3d at 504. Our analysis thus requires us to engage in a case-by-case inquiry. *Id.* at ¶ 48, 295 P.3d at 507.

¶23 We look to case law to guide that analysis. *Id.* at ¶ 44, 295 P.3d at 506. Although we have utilized several different tests to determine whether an initiative is legislative, "no single test is necessarily controlling; rather, the principles underlying those tests must guide the overall determination of whether a proposed initiative is legislative or administrative." *Id.* at ¶ 48, 295 P.3d at 507.

¶24 We have defined legislative activity as action that is permanent and general in nature, often involving a declaration of public policy. *Zwerdlinger*, 571 P.2d at 1077. In contrast, we have defined administrative activity as action that is "temporary in operation and effect" and "necessary to carry out existing legislative policies and purposes." *Id.*

¶25 These definitions have been applied to a variety of initiatives. In *Zwerdlinger*, we held that an initiative regarding utility rate ordinances was administrative in character because it was temporary, did not make new law, and pursued no new policy. *Id.* Similarly, in *City of Idaho Springs v. Blackwell*, 731 P.2d 1250, 1254–55 (Colo. 1987), we concluded that an initiative seeking to select a new site and structure for the city hall was administrative because it did "not relate to policy declarations of general applicability, and the initiative proposal therefore [did] not address matters of a permanent or general nature." Instead, the initiative was an act "'necessary to carry out' the existing legislative policy to build a new city hall." *Id.* at 1255 (quoting *Witcher v. Canon City*, 716 P.2d 445, 449 (Colo. 1986)).

¶26 Later, we clarified the definitions of legislative and administrative activity—sometimes referred to as executive acts—in *Vagneur*. There, we held unconstitutional an initiative that sought to overturn a city's proposed placement and design of a state highway entrance. *Vagneur*, ¶ 67, 295 P.3d at 511. We explained that legislative power is "the promulgation of laws of general applicability." *Id.* at ¶ 46, 295 P.3d at 507. When the government legislates, we continued, "it establishes a generally applicable rule that sets the governing standard for all cases coming within its terms." *Id.* While legislative acts are based on broad policy grounds, "executive acts are . . . based on . . . 'individualized, case-specific considerations.'" *Id.* at ¶ 47, 295 P.3d at 507 (quoting *Carter v. Lehi City*, 269 P.3d 141, 154 (Utah 2012)). "Accordingly, decisions that require specialized training and experience or intimate knowledge of the fiscal or other affairs of government to make a rational choice may be properly characterized as administrative." *Id.*

¶27 Applying these definitions in *Vagneur*, we concluded that the proposed initiatives were administrative in nature because they "[did] not propose new laws or rules of general applicability that set a governing standard." *Id.* at ¶ 51, 295 P.3d at 508. Instead, they sought "to mandate . . . a specific proposal for the location, design, and construction of a state highway corridor." *Id.* We noted that this initiative "directly circumvent[ed] a complex and multi-layered administrative

process . . . that entailed case-specific evaluation based on careful study and specialized expertise." *Id.*

¶28 We previously considered whether a zoning decision was legislative in character, and thus a proper subject of an initiative, in *Margolis*. 638 P.2d at 298. There, we concluded that "*original* zoning decisions are legislative in character since the act of original zoning is of a general and permanent character and involves a general rule or policy." *Id.* at 304–05 (emphasis added). An amendatory act of rezoning, we continued, "is likewise legislative even though the procedures may entail notice and hearing which characterize a quasi-judicial proceeding." *Id.* at 304.

¶29 Notably, however, we have also held that amendments to fundamentally contractual agreements are administrative. *See Witcher*, 716 P.2d at 451. Unlike an amendment to a policy scheme, such as a municipality's original zoning, an amendment to a contractual agreement does not change a general rule or policy. *Id.* at 450. It changes only the execution, not the substance, of a policy. In *Witcher*, we held that an amendment to a contractual agreement—a lease—was administrative because it "merely carried out the previously established policy of transferring all operational and maintenance responsibilities for the bridge to a private company." *Id.* at 451.

¶30 With these tests in mind, we turn to consider whether an amendment to a PUD agreement is properly characterized as legislative or administrative in nature.

C. Application

¶31 We conclude that an amendment to a PUD agreement is not legislative in character and thus is not a proper subject of the initiative process. Further, we distinguish this case from *Margolis* insofar as Brighton's initiative does not propose an original zoning decision; instead, it proposes to amend one specific PUD.

¶32 A municipality's adoption of an enabling ordinance is an exercise of its legislative power because it sets forth the general terms and criteria for *all PUDs within the jurisdiction*. It is a decision of "broad public policy," *Zwerdlinger*, 571 P.2d at 1077 (quoting *Whitehead v. H & C Dev. Corp.*, 129 S.E.2d 691, 696 (Va. 1963)), which establishes rules of general applicability and consequently is legislative in character, *Vagneur*, ¶ 63, 295 P.3d at 511.

¶33 Once an enabling ordinance is passed, however, a PUD application is reviewed on a site-specific basis to see if it conforms with the standards in its enabling ordinance. *See* §§ 24-67-104, -105. This process enforces preexisting legislative goals—namely, those set forth in the municipality's relevant enabling ordinance—and marks a shift from acts that are legislative in character to those that are administrative in character. *See Zwerdlinger*, 571 P.2d at 1077.

Additionally, a municipality's amendment of existing contractual obligations is administrative in nature and not subject to initiative because an amendment merely carries out existing legislative policy.

¶34 Here, when the Town passed its PUD enabling ordinance, it exercised its legislative power: It set a permanent standard for PUD applications within the Town. But, when the Town reviewed and approved Brighton's PUD application, it exercised its administrative power because it was carrying out the preexisting legislative goals set forth in the PUD enabling ordinance. The Town reviewed the application based on case-specific considerations that require specialized knowledge. For instance, the Town reviewed if the PUD application included "[a] summary of environmental conditions addressing, at a minimum, soil types and bearing capabilities; geologic hazard areas; high groundwater tables; slope steepness and potential erosion problems; flood prone areas; [and] impacts on existing fish, wildlife, vegetation[,] and wetland designations." Town of Telluride, Colo., Land Use Code, art. VI, div. 3, § 6-306.F. The PUD Agreement reflected these considerations in its terms.

¶35 By attempting to override the proper procedure to amend the PUD Agreement, Brighton invaded the Town's administrative authority. Much as in *Vagneur*, Brighton sought to circumvent a "complex and multi-layered administrative process," ¶ 51, 295 P.3d at 508, by using the initiative power to

sidestep the requirements set forth in the PUD Agreement so it could develop land set aside in the PUD as open space.

¶36 We additionally conclude that the division's reliance on *Margolis* is misplaced. To be sure, a PUD is a form of zoning. Even so, the initiative at issue here does not seek to change an *original* zoning decision. *Margolis*, 638 P.2d at 304. Instead, the initiative seeks to amend a specific PUD agreement to permit construction on a single lot that is currently designated as open space. The initiative process is not equipped to address the complex assessments required by the Town's enabling ordinance, such as how to best mitigate geologic hazard areas and high groundwater tables or how to maintain transportation linkage for adjacent properties. Which is all to say that Brighton may not use the initiative power to evade the PUD amendment process.

III. Conclusion

¶37 We conclude that amendments to PUD agreements are not legislative in character and, accordingly, are not a proper subject of the initiative process. Brighton's proposed initiative here is thus administrative in character and not a proper subject of the initiative process. For these reasons, we reverse and remand the case to the court of appeals with directions to remand it to the district court for consideration of the reasonableness of the Town's request for attorney fees.