

District Court of El Paso County, Colorado Court address: 270 S. Tejon Street, PO Box 2980 Colorado Springs, CO 80901-2980 719-448-7650	▲ COURT USE ONLY ▲
Plaintiffs: JOHN SHADA, IV, and BRENDA KAY GILLEN V. Defendants: CITY OF MANITOU SPRINGS & THE MANITOU SPRINGS CITY COUNCIL	
Attorney for Plaintiffs: Howard Morrison 231 E. Vermijo Avenue Colorado Springs, CO 80903 Phone Number: 719-633-7797 FAX Number: 719-634-1579 Atty. Reg.#: 2161	Case Number: Division Courtroom
COMPLAINT PURSUANT TO RULE 57 FOR A DECLARATORY JUDGMENT	

John Shada, IV and Brenda Kay Gillen, by their attorney, Howard Morrison, and for their Complaint under Rule 57 of the Colorado Rules of Civil Procedure, state and allege as follows:

1. The Plaintiffs are citizens and residents of Manitou Springs, El Paso County, Colorado.
2. The Defendant, the City of Manitou Springs, is a home rule City in the State of Colorado. The City Council of Manitou Springs is the governing body of Manitou Springs.
3. Plaintiffs seek declaratory relief pursuant to C.R.C.P. Rule 57.
4. In this Complaint, the terms “Amusement Tax”, “Excise Tax” and “Excise Tax on Amusements” are used synonymously and are interchangeable.
5. The City of Manitou Springs passed Manitou Springs Ordinance 1318 on June 26, 2018. A copy of that two-page Ordinance is attached and labeled Exhibit 1.
6. There was an Exhibit A to Ordinance 1318. Exhibit A is an eight-page Tax Incentive Program Agreement. Manitou Springs requires publication of an Ordinance and publication can be at its website. Exhibit A was not published on June 26, 2018 on the website; just the two-page Ordinance.
7. The Ordinance was finally published on the Manitou Springs website with Exhibit A attached on or about July 20, 2018. A copy of Exhibit A to the Ordinance is attached and labeled Exhibit 2.

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8. Pursuant to §5.13 of the City Charter of Manitou Springs (attached and labeled Exhibit 3) Manitou Springs allows a referendum petition to be submitted by citizens. Exhibit 3 sets out the procedure for such a petition.

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9. The Plaintiffs on July 13, 2018, sent a letter to Donna Kast, City Clerk of Manitou Springs, concerning the referendum process, a copy of which is attached and labeled as Exhibit 4.

10. On July 17, 2018, the Plaintiffs submitted a proposed petition to the City Clerk, a copy of which is attached and labeled as Exhibit 5.

11. A Referendum Petition, if allowed by Manitou Springs, would have requested the City Council to suspend and reconsider Ordinance 1318 and if the Council did not entirely repeal Ordinance 1318, then the Council had to submit the petition to a vote of the electors of the city either at the next general municipal election or at a special election.

12. Attached and labeled Exhibit 6 is the reply of the City Clerk of Manitou Springs dated July 23, 2018, to Mr. Shada and Ms. Gillen, which reply rejected the petition of the Plaintiffs.

13. The City Clerk's rejection is at the heart of Plaintiffs' request for a Declaratory Judgment. The City of Manitou Springs is taking the position that the Tax Incentive Program Agreement and the Ordinance that they passed is an administrative action and not a legislative or governmental action and, therefore, not subject to a Referendum Petition.

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14. The City Clerk's rejection, Exhibit 6, of the proposed Referendum Petition, is erroneous or incorrect for the following reasons:

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a. The proposed Petition submitted by the Plaintiffs does not propose municipal legislation. That would be called an Initiating Petition. What a Referendum Petition would do is request the City Council to reconsider Ordinance 1318 and if they did not entirely repeal it, then the Council would have to refer it to a vote of the Electors of the City.

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b. The City Clerk, in the second sentence of her denial letter of July 23, 2018, states only matters of a legislative nature are subject to referendum. The Plaintiffs agree with that statement. Ordinance 1318 deals with an amendment or a change to the Amusement Tax providing a rebate back to the Broadmoor or Pikes Peak Cog Railway; herein referred to as "cog" for Amusement Taxes paid by its customers over the next 50 years. When a

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previous City Council initially passed the Amusement Tax in 1971, it was exercising its legislative or governmental function. Any amendment or change to that is also legislative or governmental. The City cannot make it administrative or proprietary by simply saying it's so.

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c. By rebating most of the Amusement Taxes, the Ordinance will have the effect of altering and reducing the tax base of the City. By the City receiving fewer tax receipts to keep up the same amount of municipal services, the City will have to increase other taxes, either now or in the future, which is already a legislative function.

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d. By rebating or giving back to the cog a portion of the Amusement Tax, the City is effectively changing the amount of tax and the tax rate it is charging the cog railroad. That Amusement Tax was legislatively passed in 1971 to be 5 percent. The City cannot lower that tax rate and call what they did an administrative action.

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e. The third sentence of the July 23, 2018 letter, refers to §5.13 (Exhibit 3) of the Manitou Springs City Charter which provides, inter alia, that a Referendum Petition cannot apply to "ordinances to meet contractual obligations of the City". The City had no preexisting contractual obligations with the Broadmoor or cog railroad. The City cannot pass an Ordinance creating a contractual obligation i.e., the Tax Incentive Program Agreement and then use 5.13 to say that a Referendum Petition is not allowed or is not proper. The clause in question can logically only apply to a pre-existing contract.

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15. On information and belief, the Plaintiffs allege that the Amusement Tax received by the City of Manitou Springs for the last year that the cog railroad was in operation was approximately \$500,000.

16. The Manitou Springs City Council, like any City Council, has as one of its most important legislative functions the production of a budget. A budget depends upon taxes. By essentially capping the Amusement Tax at \$500,000 a year (with some small adjustments over the 50-year term) the future value of that \$500,000, because of historical inflation in the U.S, averaging 4.1 percent over the last 50 years, is greatly reduced, hamstringing subsequent councils and forcing them to seek other sources of revenue or taxes to make up for the shortfall. The process that will be employed would be part of the legislative or governmental functions of the City Council.

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WHEREFORE, Relief is sought pursuant to Rule 57(j) to the effect that your Plaintiffs had the right to submit a Referendum Petition to the Electors of Manitou Springs, which Petition

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would have requested that the City Council reconsider Ordinance 1318 and if it was not entirely repealed by the City Council, then the Council would be required to submit Ordinance 1318 to a vote of the Electors of the City as provided for by 5.13 of the City Charter and for such other and further relief as may be proper.

Respectfully submitted on August **, 2018.

HOWARD MORRISON
Attorney for Plaintiffs

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