

**BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
Tuesday, July 23, 2013
8 p.m.**

**SPECIAL MEETING
FINAL AGENDA**

1. CALL TO ORDER AND ROLL CALL

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE (limited to 45 min.) Public may address any city business for which a public hearing is not scheduled later in the meeting (this includes the consent agenda and first readings). After all public hearings have taken place, any remaining speakers will be allowed to address council. All speakers are limited to three minutes.

3. CONSENT AGENDA (to include first reading of ordinances) Vote to be taken on the motion at this time.

A. Consideration of a **motion to certify an initiative petition regarding limitation on debt**

B. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance setting the ballot title for an initiated amendment to the Boulder Charter**, and setting forth related details.

4. DEBRIEF (5 Min.) Opportunity for Council to discuss how the meeting was conducted

5. ADJOURNMENT

This agenda and the meetings can be viewed at www.bouldercolorado.gov / City Council. Meetings are aired live on Municipal Channel 8 and the city's Web site and are re-cablecast at 6 p.m. Wednesdays and 11 a.m. Fridays in the two weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library. Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's Office at (303) 441-3002, 8 a.m. – 5 p.m. Monday through Friday. ***48 hours notification prior to the meeting or preparation of special materials IS REQUIRED.*** If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three days prior to the meeting. *Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 días antes de la junta.* Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 5:30 p.m. at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.

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STATE OF COLORADO)
COUNTY OF BOULDER) SS.
CERTIFICATE)
CITY OF BOULDER)

I, Alisa D. Lewis, City Clerk of the City of Boulder, Colorado, pursuant to Colorado State Statutes 31-2-210, do hereby certify as follows:

1. On May 16, 2013, there was filed in my office a letter of intent (signed by the committee of petitioners) to circulate a petition calling for a City of Boulder Charter Amendment Question to be placed on the November 5, 2013 ballot which states:

Shall Article XIII of the Charter of the City of Boulder be amended by the addition of the following section:

Section 188. Limitations on debt.

- (a) Before the electric utility enterprise issues any debt, voters must approve the amount of the utility's debt limit and the total cost of debt repayment that the utility will incur, both to be stated in dollars in any ballot question; and
 - (b) The utility's service area shall not extend to areas outside the city limits unless registered electors in those areas are permitted to vote in these debt limit and repayment cost elections; and
 - (c) Such elections shall be held on the dates of general municipal elections; and
 - (d) Any brokerage fees for managing any sale of bonds or other indebtedness shall be limited to 1% of proceed?
2. A petition to submit a charter amendment at the next regular election must be signed by at least five percent of the registered electors of the municipality registered on the date of filing the statement of intent. As of the date, May 16, 2013, there were ninety thousand, nine hundred and seventy seven (90,977) registered voters residing in the City of Boulder, Colorado. Therefore the number of valid signatures required is four thousand, five hundred forty nine (4,549).
 3. The petition to amend the Charter petition submitted on June 28, 2013, contained 243 sections, said to contain 8190 signatures according to the committee of petitioners.
 4. That no later than fifteen working days from the date of petition submission, the city clerk shall determine its sufficiency. That deadline is July 19, 2013.
 5. After comparison of the names on the petition with the names in the voter registration rolls of Boulder County, the petitions have on their face sufficient signatures, with 5,105 signatures specifically verified.
 6. In addition, without expressing anything regarding the legality or validity of the contents of the petition, pursuant to C.R.S. 31-2-210(3), I certify to the City Council the validity of the process of submitting the petition form and signed petitions to me.

IN WITNESS WHEREOF, I have hereto affixed my signature and the official Seal of the City of Boulder this 19th day of July, 2013.

Alisa D. Lewis, MMC
City Clerk, City of Boulder

(S E A L)

CERTIFICATE OF DELIVERY

I, Alisa D. Lewis, City Clerk of the City of Boulder do hereby certify that the attached certificate was hand delivered Diane Rees (as the representative of the Committee of Petitioners) on June 28, 2013.

Committee of Petitioners:

1. James B. Steinmetz
245 Fair Place
Boulder, CO 80302
2. Diane D. Rees
783 Cypress Drive
Boulder, CO 80303
3. Mary M. (Meg) Collins
3239 4th Street
Boulder, CO 80304
4. Brian A. Barrett
783 13th Street
Boulder, CO 80302
5. Michael A. Scott
1531 Lodge Lane
Boulder, CO 80303

IN WITNESS WHEREOF, I have hereto affixed my signature and the official Seal of the City of Boulder this 28th day of June 2013.

Alisa D. Lewis, City Clerk

Received by:

_____ June 28, 2013



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: July 24, 2013

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only an ordinance setting the ballot title for an initiated amendment to the Boulder Charter, and setting forth related details.

PRESENTERS:

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Paul J. Fetherston, Deputy City Manager
Alisa D. Lewis, City Clerk
Kathy Haddock, Senior Assistant City Attorney

EXECUTIVE SUMMARY:

On June 28, 2013, the petitioner committee for an initiated amendment to the Boulder Home Rule Charter submitted a petition purporting to contain the signatures of 8190 registered voters of the city. The city clerk anticipates that there will be sufficient verified signatures on the petition by the due date of July 19, 2013. Section 31-2-210 C.R.S. requires the City Council to set a ballot title for the proposed amendment "at its next meeting." Council has traditionally set ballot titles by ordinance. Staff has prepared the attached ordinance for council's consideration to set the ballot title.

STAFF RECOMMENDATION:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce on first reading and order published by title only an ordinance setting the ballot title for an initiated amendment to the Boulder Home Rule Charter.

BACKGROUND:

A statement of intent to circulate a petition was submitted to the city clerk on May 16,¹ 2013. The clerk’s comments advised the petition committee of the following:

The petition committee was required to submit the petition with signatures of at least five percent of the registered electors registered on the date of filing of the statement of intent. § 31-2-210(1)(a)(III) C.R.S. Five percent of the registered electors was 4,549. The city clerk has certified that the petition is sufficient with 8190 signatures of registered electors. The statute allows a protest to be filed with the city clerk by a registered elector within 30 days of June 28, 2013. § 31-2-223 C.R.S.

The petition proposes adding a new section 188 to the Boulder Home Rule Charter, in Article XIII “Light and Power Utility,” to require approval of any debt limit and repayment costs of the electric enterprise before it issues any debt; to permit any registered electors outside the city limits and within the service area to vote on the debt limit and repayment costs, to limit elections on the utility debt to November of odd-numbered years and limit brokerage fees for managing any sale of bonds or other indebtedness to one percent of proceeds.

The proposed initiative does not set up a legal procedure for voters in unincorporated areas of the county to vote in city elections.

APPLICABLE LAW

The City Council is responsible for setting the ballot title by section 31-2-210(3) C.R.S. regarding amendments to home rule charters. The petition committee has not proposed a ballot title and “ballot title” is not defined in the Boulder Revised Code, or the state Election Code adopted by the city, or the statute specifying the procedure for charter amendments. Some guidance is found in section 1-40-102(2), (8) and (10) C.R.S. regarding initiatives and referenda at the state level. These citations contain the following definitions:

“Ballot title” means the language which is printed on the ballot which is comprised of the submission clause and the title.

¹ The petition committee submitted its first intent to circulate a petition on May 8, but withdrew the form. On May 13, the petition committee submitted its first amended petition form, but the form was withdrawn by the petition committee after receiving the letter of May 16, 2013, attached as Attachment B. The committee resubmitted the form later on May 16, 2013.

“Submission clause” means the language which is attached to the title to form a question which can be answered by “yes” or “no”.

“Title” means a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.

ANALYSIS:

The petition identifies the title to the proposed new section 188 as “limitations on debt” however, this label does not “fairly and accurately represent the true intent and meaning of the proposed initiative.” Further, the Colorado Supreme Court has found that a title that did not indicate that a particular geographic area was affected by the proposal was not an adequate ballot title. *Matter of Proposed Initiative 1996-17*, 920 P.2d 798 (Colo. 1996). The Colorado Supreme Court has found ballot titles that track the language of the initiative, without an interpretation of the measure or its constitutionality, were sufficient titles as the interpretation of the measure or its constitutionality were outside the purview of the title setting board. *Matter of Proposed Initiative 1997-98 No. 10*, 943 P.2d 897 (Colo. 1997).

Staff recommends that the change to the Charter proposed in the initiated Charter amendment, identified as the full text of the proposed measure, be the ballot title as follows:

Ballot Question No. _____

Limit on Debt of a New Electric Utility and
Providing County Voters Elector Status in Related City Election

Shall Article XIII of the Charter of the City of Boulder be amended by the addition of a new section 188 “Limitations on Debt” that provides (a) before the electric utility enterprise issues any debt, voters must approve the amount of the utility’s debt limit and the total cost of debt repayment that the utility will incur, both to be stated in dollars in any ballot question; and (b) the utility’s service area shall not extend to areas outside the city limits unless registered electors in those areas are permitted to vote in these debt limit and repayment cost elections; and (c) such elections shall be held on the dates of general municipal elections; and (d) any brokerage fees for managing any sale of bonds or other indebtedness shall be limited to one percent of proceeds?

For the Measure _____ Against the Measure _____

ATTACHMENT:

A- Proposed Ordinance

B - Letter of May 16, 2013

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ORDINANCE NO. ____

AN ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE QUESTION SUBMITTED AS AN INITIATED AMENDMENT TO THE CHARTER BY ADDING A NEW SECTION 188 TO REQUIRE VOTER APPROVAL OF THE ELECTRIC UTILITY DEBT LIMIT AND TOTAL COST OF DEBT REPAYMENT PRIOR TO ISSUANCE OF ANY DEBT, PROVIDING COUNTY VOTERS IN THE SERVICE AREA VOTING STATUS IN CITY ELECTIONS, LIMITING SUCH ELECTIONS TO NOVEMBER IN ODD-NUMBERED YEARS, AND LIMITING BROKERAGE FEES ON SUCH INDEBTEDNESS; SETTING FORTH THE BALLOT TITLE; AND SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. On June 28, 2013, a petition committee presented a petition with sufficient signatures of registered electors to initiate a vote on a proposed addition to the City Charter pursuant to section 31-2-210 C.R.S. The City Council is required to set the ballot title for the proposed amendment.

Section 2. A general municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2013.

Section 3. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of making the amendment to the City Charter proposed by the petition committee with the following ballot title, which shall also be the designation and submission clause for the measure:

Ballot Question No. _____

Limit on Debt of a New Electric Utility and

Providing County Voters Elector Status in City Elections

Shall Article XIII of the Charter of the City of Boulder be amended by the addition of a new section 188 "Limitations on Debt," that provides (a) before the electric utility enterprise issues any debt, voters must approve the amount of the utility's debt limit and the total cost of debt repayment that the utility will incur, both to be stated in dollars in any ballot question; and (b) the utility's service area shall not extend to areas outside the city limits unless registered electors in those areas are permitted to vote in these debt limit and repayment cost elections; and (c) such elections shall be held on the dates of general municipal elections; and (d) any brokerage fees for managing any sale of bonds or other indebtedness shall be limited to one percent of proceeds?

For the Measure _____ Against the Measure _____

Section 3. If a majority of all the votes cast at the election on the measure submitted are for the measure, the measure shall be deemed to have passed and the Charter shall be amended as provided in this ordinance. If this ballot measure is approved by the voters, the Charter shall be so amended, and the City Council may adopt any necessary amendments to the Boulder Revised Code to implement this change.

Section 4. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981, and this ordinance.

Section 5. The officers of the City are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the election for the City.

1 Section 6. If any section, paragraph, clause, or provision of this ordinance shall for any
2 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
3 provisions of this ordinance.

4 Section 7. This ordinance is necessary to protect the public health, safety, and welfare of
5 the residents of the City, and covers matters of local concern.
6

7 Section 8. The City Council deems it appropriate that this ordinance be published by title
8 only and orders that copies of this ordinance be made available in the office of the city clerk for
9 public inspection and acquisition.
10

11 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
12 TITLE ONLY this ____day of July, 2013.

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15 _____
16 Mayor

17 Attest:

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19 _____
20 City Clerk

1 READ ON SECOND READING, PASSED, ADOPTED AND ORDERED PUBLISHED

2 BY TITLE ONLY this __day of _____, 2013.

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Mayor

Attest:

City Clerk

CITY OF BOULDER, COLORADO

Office of the City Clerk
Municipal Building
1777 Broadway
Post Office Box 791
Boulder, Colorado 80306
Telephone (303) 441 3090



May 16, 2013

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Philfox1@msn.com

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Michael A. Scott
1531 Lodge Lane
Boulder, CO 80303

Mark Grueskin, Esq.
mgrueskin@hpgfirm.com

Re: Petition form submitted on May 13, 2013

Dear Petition Representatives and Mr. Grueskin:

I have reviewed the Petition form submitted to me on May 13, 2013 at 3:25 p.m. and have the following comments pursuant to C.R.S. § 31-2-210, 220 and 221, and the Boulder Home Rule Charter:

1. The warning block includes extraneous material: C.R.S. § 31-2-220
2. I understand at least one of the representatives has not lived in the municipal election precinct for at least 30 days and therefore does not meet the definition of registered elector stated in C.R.S. § 31-2-220. If true, the petition is not signed by at least five registered electors as required by C.R.S. § 31-2-210(a)(I).
3. The proposed measure is not submitted in the form of a question.
4. Subsection (b) of the proposed measure is not a limitation on debt, but a limitation on the service area of a utility, and therefore violates the single subject rule.

Mark Grueskin, Esq.

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May 16, 2013

Re: Petition form submitted on May 13, 2013

5. Subsection (c) of the proposed measure limits elections to the dates of general municipal elections which are on the first Tuesday in November of odd-numbered years. No provision of the Boulder Charter limits elections on charter issues to less often than every year. Did you intend to limit elections on debt of the utility to once every two years, or do you mean to limit the votes to the November election each year?
6. The location of the blank for the Petition Number indicates that only the signature pages, and not the Petition to Initiate page, are part of the petition. The Petition Number should be on the top of the first page of the Petition and the last page should be the Circulator Affidavit.

Please contact Kathy Haddock in the City Attorney's Office if you have any questions (haddock@bouldercolorado.gov or at 303-441-3020).

Sincerely,



Alisa D. Lewis
City Clerk

cc: Kathleen Haddock, Sr. Assistant City Attorney