

**- PROPOSED -**

**(Limited Term Energy Utility Excise Tax – Revenue Replacement)**

ORDINANCE NO. 7747

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE SPECIAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2010, THE ISSUE OF WHETHER THE CITY OF BOULDER TAXES SHOULD BE INCREASED BY UP TO \$3.9 MILLION (IN THE FIRST FULL FISCAL YEAR) ANNUALLY AND BY SUCH AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY THE IMPOSITION OF A UTILITY EXCISE TAX ON PUBLIC UTILITY COMPANIES THAT DELIVER ENERGY TO CUSTOMERS IN THE FORM OF ELECTRICITY AND GAS AT THE RATE \$0.00223 PER KILOWATT HOUR (kWh) AND THE RATE OF \$0.0164 PER THERM, BEGINNING JANUARY 1, 2011 AND EXPIRING ON DECEMBER 31, 2015; AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

- A. The franchise agreement between the City of Boulder and Public Service Company of Colorado (“PSCo”), adopted pursuant to Ordinance No. 5569 and adopted by the electorate in November 1993 is scheduled to expire on August 4, 2010 (the “Franchise”).
- B. The City and PSCo have extended the terms of the Franchise pursuant to a revocable permit granted pursuant to the authority granted under Ordinance #7729 and under City Charter Section 115.
- C. In the event that the City does not approve a new franchise agreement, the City will need to find an alternative revenue source to replace the benefits of the Franchise, including franchise fee payments to the City.
- D. It is appropriate for voters to approve collection, retention, and expenditure of the full amount collected from the tax proposed by the ballot issue described below.

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

Section 1. A special municipal coordinated election will be held in the City of Boulder, county of Boulder and state of Colorado, on Tuesday, November 2, 2010, between the hours of 7 a.m. and 7 p.m.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the issue of authorizing a utility excise tax on the delivery of energy created from electricity and gas, and to collect, retain, and spend the revenues generated from such tax notwithstanding any state revenue or expenditure limitations.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

ISSUE NO. \_\_\_\_

**FIVE YEAR UTILITY EXCISE TAX**

SHALL CITY OF BOULDER TAXES BE INCREASED (UP TO \$3.9 MILLION IN THE FIRST YEAR) ANNUALLY AND BY SUCH AMOUNTS AS MAY BE COLLECTED THEREAFTER, BY IMPOSING A TAX ON PUBLIC UTILITY COMPANIES TO REPLACE THE 3 PERCENT FRANCHISE FEE IF IT IS NO LONGER COLLECTED BY PUBLIC SERVICE COMPANY OF COLORADO ("XCEL ENERGY") FROM ITS BOULDER CUSTOMERS AND REMITTED TO THE CITY;

AND IN CONNECTION THEREWITH SHALL THE CITY COUNCIL BE AUTHORIZED TO:

- LEVY AND COLLECT THIS TAX TO TAKE EFFECT ON JANUARY 1, 2011 AND EXPIRE ON DECEMBER 31, 2015,

- LEVY AND COLLECT THIS TAX UPON PUBLIC UTILITY COMPANIES THAT DELIVER ELECTRICITY AND NATURAL GAS TO CUSTOMERS WITHIN THE CITY OF BOULDER AT THE RATES OF **\$0.00223** PER KILOWATT HOUR (kWh) AND **\$0.0164** PER THERM,
- AND DEVELOP PLANS FOR PROVIDING A CLEANER FUTURE ENERGY SUPPLY WITH THE INTENT OF PLACING CHOICES FOR BOULDER'S ENERGY SUPPLY ON THE BALLOT BEFORE THE END OF 2015;

AND SHALL THE FULL PROCEEDS OF THIS TAX AT SUCH RATES AND ANY EARNINGS THEREON BE COLLECTED, RETAINED, AND SPENT, AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION, AND WITHOUT LIMITING THE COLLECTION, RETENTION, OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

FOR THE MEASURE \_\_\_\_\_ AGAINST THE MEASURE \_\_\_\_\_

Section 4. If this ballot issue is approved by the voters, the City Council may adopt amendments to the Boulder Revised Code to implement this utility excise tax and such other amendments to the Boulder Revised Code as may be necessary to implement the intent and purpose of this ordinance.

Section 5. If a majority of all the votes cast at the election on the issue submitted shall be for the issue, the issue shall be deemed to have passed and shall be effective upon passage, and it shall be lawful for the City Council to provide for the amendment of its tax code in accordance with the issue approved.

Section 6. 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, and all contrary provisions of the statutes of the state of Colorado are hereby superseded.

Section 7. 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.

Section 8. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance.

Section 9. This ordinance is necessary to protect the public health, safety and welfare of the residents of the City, and covers matters of local concern.

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

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 20th day of July 2010.

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Mayor

Attest:

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City Clerk on behalf of the  
Director of Finance and Record

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED  
PUBLISHED BY TITLE ONLY this 3rd day of August 2010.

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Mayor

Attest:

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City Clerk on behalf of the  
Director of Finance and Record