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ORDINANCE NO. 7920

AN EMERGENCY 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 OF SETTING A DEBT LIMIT FOR ACQUISITION OF ELECTRIC UTILITY ASSETS; AMENDING ARTICLE XIII OF THE CITY CHARTER TO ALLOW UTILITY RELATED QUESTIONS TO BE CONSIDERED AT ANY ELECTION, ALLOWING OUT OF CITY SERVICE AND NON-RESIDENT CUSTOMERS TO BE REPRESENTED ON THE UTILITY ADVISORY BOARD; ADDING UTILITY SERVICES STANDARDS AND REQUIREMENTS FOR THE ELECTRIC UTILITY BOARD RELATED TO RATES AND RATE MAKING, AND SETTING STANDARDS AGAINST DISCRIMINATION AND THE GRANTING OF PRIVILEGES AND ADVANTAGES; ADDING NEW SECTIONS OF THE CITY CHARTER RELATED TO ACQUISITION DEBT LIMITS AND CUSTOMER CHOICE FOR OUT OF CITY UTILITY CUSTOMERS; SUPERSEDING ANY INITIATED BALLOT MEASURE TO THE CONTRARY; SETTING FORTH THE BALLOT TITLE; 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.** 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 2.** 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 following amendments to the City Charter.

1           **Section 3.** Add new Subsections 180(j) and 180(k) as follows, which the  
2 City Council finds conflict directly with the ballot measure as set forth in  
3 Ordinance No. 7919, in particular, the proposed Subsections 188(b) and 188(c):

4  
5           **Sec. 180. Powers of the electric utility enterprise.**

6           ...

7           (j) Any ballot measure related to the light and power utility, including  
8 without limitation measures related to debt, may be placed on a ballot at  
9 any election, including without limitation a special election, a general  
10 municipal election or a special municipal election.

11           (k) The light and power utility's service area may include customers  
12 outside of the city to the extent that such a service area shall assist with the  
13 provision of a safe and reliable system for service to the utility's  
14 customers.

15           **Section 4.** Amend Charter Section 182 as follows, which the City Council  
16 finds conflicts directly with the ballot measure as set forth in Ordinance No. 7919,  
17 in particular, the proposed Section 188(b):

18           **Sec. 182. Utility service standards.**

19           ...

20           (d) Rates: The council will by ordinance fix, establish, maintain, and provide  
21 for the collection of such rates, classes of rates, fees, or charges for electric  
22 service and other utility services furnished by the city. Prior to changing  
23 rates, classes of rates, fees, or charges, the utility advisory board will  
24 review changes and provide a recommendation to the council, based on  
25 the criteria in this section. The council will consider the following factors  
when setting utility rates:

(1) The utility will produce revenues at least sufficient to pay the cost of  
operation and maintenance of said utilities in good repair and working  
order; to pay the principal of and interest on all bonds of the city  
payable from the revenues of the utility;

1 (2) The utility will provide and maintain an adequate fund for  
2 replacement of depreciated or obsolescent property, and for the  
3 extension, improvement, enlargement, and betterment of the utility; to  
4 pay the interest on, and the principal of, any bonds issued by the city  
5 to extend or improve the utilities;

6 (3) The utility will consider electricity rates of surrounding and similarly  
7 situated communities and use best efforts to set competitive utility  
8 rates; and

9 (4) The council will fix rates for which electric service will be furnished  
10 for all purposes, and rates shall be as low as good service will permit,  
11 consistent with the guiding principles set forth in Section 178 (c)(1) –  
12 (6).

13 ...

14 (j) Preferences Prohibited: The utility shall not make or grant any  
15 preference or advantage to any corporation or person or subject any  
16 corporation or person to any prejudice or disadvantage as to rates, charges,  
17 service, or facilities, or in any other respect including without limitation  
18 whether the customer is inside or outside the city limits.

19 (k) Advantages Prohibited: The utility shall not establish or maintain any  
20 unreasonable differences or undue preferences as to rates, charges, service,  
21 facilities, or any respect as between any class of services including without  
22 limitation whether the customer is inside or outside the city limits. The  
23 utility may create a fund to provide assistance to low-income customers  
24 for energy efficiency or generation improvements or utility bill payments.  
25 When considering whether to approve such a fund, and give a preference  
or advantage to low-income utility customers, the utility shall take into  
account the potential impact of and cost-shifting to, utility customers other  
than the low-income utility customers.

**Section 5.** Amend Section 185 as follows, which the City Council finds  
conflicts directly with the ballot measure as set forth in Ordinance Number 7919,  
in particular, the proposed Section 188(b):

1           **Sec. 185. Creation of the electric utilities board**

2           (b) Board qualifications: Board members shall be selected from the  
3 registered electors of the city, customers of the electric utility, or the  
4 owners or employees of a business or governmental entity that is a  
5 customer of the electric utility, provided, however, that a majority of the  
6 board shall be registered electors of the city. Board members shall be well  
7 known for their ability, probity, public spirit, and particular fitness to serve  
8 on the electric utilities board. At least three board members shall be  
9 owners or employees of a business or governmental entity that is a  
10 customer of the electric utility. The duty of each member shall be to  
11 represent the entire utility customer base without discrimination between  
12 customer class or location without regard to the location or class of  
13 customer or the member.

9           **Section 6.** Add a new Section 188 as follows, which the City Council  
10 finds conflicts directly with the ballot measure as set forth in Ordinance No.7919,  
11 in particular, the proposed Sections 188(a), (b) and (d):

12           **Sec. 188. Limitations on Debt**

13           (a) Those portions of the bonds or other obligations issued by the utility for  
14 the purpose of purchasing or otherwise acquiring the existing assets of the electric  
15 system and for paying stranded costs in one complete payment shall be limited to  
16 an amount not-to-exceed \$214,000,000, which not-to-exceed amount may be  
17 increased annually by the Denver-Boulder-Greeley Consumer Price Index, and  
18 without limiting the authority of the utility to issue bonds or other obligations in  
19 any amount for all other lawful purposes in compliance with the charter and other  
20 applicable laws, and without limiting the authority of the utility to pay stranded  
21 costs as a part of rates rather than as one complete payment.

19           (b) Underwriting fees and other costs of issuance of bonds or other  
20 obligations shall be limited to no more than commercially reasonable  
21 amounts paid by similarly situated utilities.

21           **Section 7.** The official ballot shall contain the following ballot title, which shall  
22 also be the designation and submission clause for the measure:  
23  
24  
25

Ballot Question No. 2E

Electric Utility Amendments, \$214 million acquisition debt limit and superseding other initiatives

Shall the Boulder Home Rule Charter be amended pursuant to Ordinance No. 7920, to limit the portion of bonds or other obligations issued for the purpose of purchasing or otherwise acquiring the existing assets of the electric system and for paying stranded costs in one complete payment to an amount not-to-exceed \$214 million, which amount may be increased annually by the Denver-Boulder-Greeley Consumer Price Index, and without limiting the authority of the utility to issue bonds or other obligations in any amount for all other lawful purposes in compliance with the Charter and other applicable laws, and without limiting the authority of the utility to pay stranded costs as a part of rates rather than as one complete payment; and limiting the underlying fees and other costs of issuance of the bonds to amounts paid by other similarly situated utilities; limiting the utility's service area to an area supporting safe and reliable service to its customers; providing for elections at special or general elections; requiring the utility advisory board to advise the council on rate making; providing for customer choice for out of city customers; for out of city customers to be represented on the utility advisory board; and to provide that, if this ballot question receives more votes than all other initiatives which pertain to debt limitations or the adoption of a new Section 188 of the city Charter, then this measure shall become law and such other initiatives shall not be implemented?

For the Measure \_\_\_\_\_ Against \_\_\_\_\_ the Measure \_\_\_\_\_

**Section 8.** As permitted by Section 31-2-215(1),C.R.S., this ballot measure is an alternative charter amendment that is to be submitted for the choice of the voters and will be voted on separately from the ballot measure that will be presented to the voters pursuant to Ordinance No. 7919. This ballot measure is also intended to conflict with all of the provision of Ordinance No. 7919. Under Charter Section 53 and Section 31-2-215,

1 C.R.S., if this measure receives the highest number of affirmative prevailing votes, this  
2 measure shall prevail over Ordinance No. 7919.

3 **Section 9.** Adding a new Section 189 to the city Charter as follows:

4  
5 **Sec. 189. Out-of-city customer choice**

6 To the extent practical and allowed by law, upon the creation of the utility,  
7 the city wants to facilitate the ability of customers that are outside of the  
8 city boundaries and are not enclaves as defined in the Municipal  
9 Annexation Act of 1965 to choose their utility provider. It is anticipated  
10 that customers within a geographic area that constitutes a rational service  
11 area may wish to not take service from the light and power utility upon its  
12 creation. The city council will adopt an approach to identifying such areas  
13 and understanding the preference of the area through voting, polling, or  
14 other approaches to public outreach. If the majority of those expressing a  
15 preference is to not take service from the city, the city will attempt to  
16 accommodate the customer wishes as a group through subsequent  
17 legislation, participation in the Colorado Public Utilities Commission, or  
18 other practical means.

13 **Section 10.** Any debt limit or bonding amount that is described in this ordinance  
14 is not intended to be used for the purpose of determining the value, just compensation, or  
15 fair market value of any part of the utility system.

16  
17 **Section 11.** If a majority of all the votes cast at the election on the measure  
18 submitted are for the measure, the measure shall be deemed to have passed and the  
19 Charter shall be amended as provided in this ordinance. If this ballot measure is approved  
20 by the voters, the Charter shall be so amended, and the City Council may adopt any  
21 necessary amendments to the Boulder Revised Code to implement this change.

22  
23 **Section 12.** The election shall be conducted under the provisions of the Colorado  
24 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and  
25 this ordinance.

1           **Section 13.** The officers of the city are authorized to take all action necessary or  
2 appropriate to effectuate the provisions of this ordinance and to contract with the county  
3 clerk to conduct the election for the city.  
4

5           **Section 14.** If any section, paragraph, clause, or provision of this ordinance shall  
6 for any reason be held to be invalid or unenforceable, such decision shall not affect any  
7 of the remaining provisions of this ordinance.  
8

9           **Section 15.** This ordinance is necessary to protect the public health, safety, and  
10 welfare of the residents of the city, and covers matters of local concern.

11           **Section 16.** The City Council deems it appropriate that this ordinance be  
12 published by title only and orders that copies of this ordinance be made available in the  
13 office of the city clerk for public inspection and acquisition.  
14

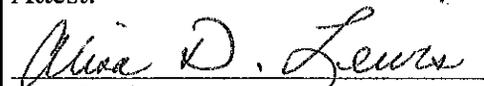
15           **Section 17.** The City Council finds that this ordinance is necessary for the  
16 preservation of the public peace, health, or property. The City Council amended the  
17 ordinance on third reading. This ordinance includes a ballot measure. Emergency  
18 passage is necessary to allow time for this matter to be placed on the November 5, 2013  
19 ballot.  
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1 INTRODUCED, READ ON FIRST READING, AMENDED AND ORDERED

2 PUBLISHED BY TITLE ONLY this 24<sup>th</sup> day of July, 2013.

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4   
Mayor

5 Attest:

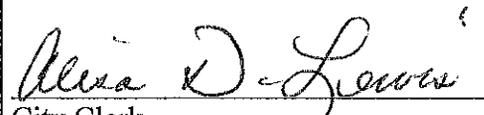
6   
7 City Clerk

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9 READ ON SECOND READING, AMENDED AND ORDERED PUBLISHED

10 BY TITLE ONLY this 6<sup>th</sup> day of August, 2013.

11  
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Mayor

13 Attest:

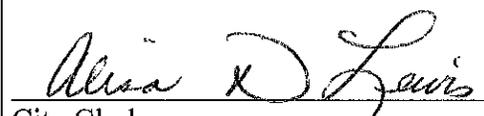
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16 City Clerk

17 READ ON THIRD READING, AMENDED, PASSED, ADOPTED AND

18 ORDERED PUBLISHED BY TITLE ONLY this 20<sup>th</sup> day of August, 2013.

19  
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Mayor

21 Attest:

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24 City Clerk