

Election — November 5, 2013

**City of Boulder  
Ballot Issues**



**League of Women Voters®  
of Boulder County**

*The League of Women Voters is not responsible for the accuracy or fairness of the arguments of either side.*

**BOULDER ISSUE NO. 2A  
RECREATIONAL MARIJUANA TAX**

SHALL CITY OF BOULDER TAXES BE INCREASED BY (\$3,360,000 FIRST FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY THE IMPOSITION OF AN EXCISE TAX OF 5 PERCENT IN 2014 AND UP TO 10 PERCENT THEREAFTER ON THE CULTIVATION FACILITY AT THE AVERAGE MARKET RATE AT THE POINT OF TRANSFER FROM THE CULTIVATION FACILITY AND AN ADDITIONAL SALES AND USE TAX OF 3.5 PERCENT IN 2014 AND UP TO 10 PERCENT THEREAFTER ON RECREATIONAL MARIJUANA AS PROVIDED IN ORDINANCE NO. 7916 COMMENCING JANUARY 1, 2014 WITH SUFFICIENT REVENUES FROM THE EXCISE AND SALES AND USE TAX TO BE USED FOR PUBLIC SAFETY, ENFORCEMENT AND ADMINISTRATIVE PURPOSES AND FOR COMPREHENSIVE SUBSTANCE ABUSE PROGRAMS INCLUDING WITHOUT LIMITATION PREVENTION, TREATMENT, EDUCATION, RESPONSIBLE USE, INTERVENTION, AND MONITORING, WITH AN EMPHASIS ON YOUTH, AND WITH THE REMAINDER USED BY THE GENERAL FUND;

AND IN CONNECTION THEREWITH,

SHALL THE FULL PROCEEDS OF SUCH TAXES 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?

**Major provisions**

If passed, Ballot Issue No. 2A will allow the City of Boulder to levy an excise tax of 5% in 2014, and up to 10% thereafter, on the sale of recreational marijuana from a marijuana cultivation facility, and a sales tax of 3.5% in 2014, and up to 10% thereafter, on the sale of recreational marijuana from a recreational marijuana center or store. The revenue from these taxes will go to the general fund to be used for public safety and for substance abuse programs.

**Background**

While the sale of recreational marijuana is illegal at the federal level, in Colorado in November, 2012, voters approved Amendment 64 which legalizes the use of recreational marijuana within the state. It allows Colorado residents 21 and older to lawfully use and possess up to one ounce of marijuana, and requires that a regulatory structure be established. It allows the cultivation, processing, and retail sale of marijuana in Colorado on and after January 1, 2014. It authorizes the state and local governments to impose an additional excise and sales and use tax on such businesses. The U.S. Justice Department announced in August, 2013, that it will allow Colorado to regulate the sale of recreational marijuana.

The impacts of the legal sale of recreational marijuana are unknown. Issue 2A, referred to voters by City Council, would provide funds for addressing public safety, enforcement, administration, and substance abuse programs. Neither of the proposed taxes would be levied on medical marijuana.

**Those IN FAVOR say**

1. While use of marijuana will be legal for those over the age of 21, enforcement will be needed to ensure that access is restricted for those under 21.
2. Current substance abuse education efforts targeting youth are not adequate to address the additional need that will be created in response to the decreased perception of risk and increased access.
3. Effective and coordinated education about risks, targeted at youth and parents, is key to minimizing harm to youth.

**Those OPPOSED say**

1. The tax burden is already high on businesses and should not be increased.
2. There is an uncertainty about how the tax dollars will be allocated and spent.
3. Higher taxes will increase the cost of recreational marijuana, forcing citizens to return to the black market for more affordable marijuana.

**BACKGROUND TO BALLOT ISSUE NO. 2B AND BALLOT QUESTIONS 2C AND 2D**

*In 1967, City of Boulder voters approved a 0.4 cent sales tax to purchase and maintain City open space in perpetuity.*

*In 1987, voters approved an additional 0.33 cent sales tax, renewed in 1997, which expires at the end of 2018.*

*In 1998, a third open space sales tax for 0.15 cent was passed which will expire at the end of 2019.*

*Today, the three open space sales taxes combined represent some 25% of Boulder's sales tax revenue. The Open Space Program has acquired and maintains an extensive portfolio of open space land surrounding the City.*

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*City Council feels that the land purchase plan is nearly complete and it is time to reallocate some of the Open Space monies to other pressing needs such as transportation and the General Fund.*

*Issue No. 2B, Question 2C, and Question 2D are designed to begin this transition.*

*Council proposes that the two open space sales taxes that are set to expire in 2018 (0.33 cent) and 2019 (0.15 cent) be extended and reallocated, as described in 2C and 2D, respectively.*

*Council proposes a new sales tax (2B) to finance transportation between now and 2020 when the reallocation of the 0.15 cent tax (2D) would begin.*

**BOULDER ISSUE NO. 2B  
SALES AND USE TAX  
[For Transportation]**

SHALL CITY OF BOULDER TAXES BE INCREASED (\$4,482,200 FIRST FULL FISCAL YEAR DOLLAR INCREASE ANNUALLY) BY INCREASING THE SALES AND USE TAX BY 0.15 CENTS FOR THE PERIOD OF JANUARY 1, 2014 TO DECEMBER 31, 2019 WITH ALL OF THE REVENUES COLLECTED USED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES?

AND IN CONNECTION THEREWITH,

SHALL THE FULL PROCEEDS OF SUCH TAX AT SUCH RATE 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?

### Major Provisions

If passed, Ballot Issue 2B would increase the City of Boulder sales tax by 0.15 cent from 2014 through 2019. The money raised would be used for transportation purposes for those six years and then expire. These purposes include construction and services such as maintenance of pavement, construction of infrastructure, and transit service.

### Background

City Council has referred proposals 2B, 2C, and 2D to the voters as a three-proposal package, as outlined in the “Background” that precedes 2B.

### Those IN FAVOR say

1. The City’s transportation system is in dire need of additional funds.
2. Passage of this tax would provide funds until the reallocated Open Space tax money becomes available in 2020—provided Ballot Question 2D passes.

### Those OPPOSED say

There is no organized opposition.

### **Boulder Question 2C** **Sales and Use Tax Extension** [For Open Space and General Fund]

Without raising additional taxes, shall the existing 0.33 cent City sales and use tax for the acquisition and preservation of open space land, approved by the voters by Ordinance No. 5222, be extended beyond the current expiration date of December 31, 2018; and beginning January 1, 2019 designating 0.22 cent of every dollar taxed to fund the acquisition and preservation of open space land; 0.11 cent of every dollar taxed to fund services such as fire, police, libraries, parks, recreation, human services and other general fund purposes; and beginning January 1, 2035 designating 0.10 cent of every dollar

taxed to fund the acquisition and preservation of open space land; and 0.23 cent of every dollar taxed to fund services such as fire, police, libraries, parks, recreation, human services and other general fund purposes as a voter approved revenue change?

### Major Provisions

If passed, Question 2C will extend in perpetuity the 0.33 cent Open Space sales tax that is currently set to expire in 2018. Beginning January, 2019, through 2034, of every dollar taxed Open Space will receive 0.22 cent and the General Fund 0.11 cent. Beginning January, 2035, of every dollar taxed Open Space will receive 0.10 cent and the General Fund 0.23 cent.

### Background

City Council has referred proposals 2B, 2C, and 2D to the voters as a three-proposal package, as outlined in the “Background” that precedes 2B.

### Those IN FAVOR say

1. Our City funding is out of balance. Open Space taxes are diverting much-needed funds from other City services such as transportation, arts and even police and fire protection.
2. If Question 2C passes, Open Space will continue, until 2034, to have 0.62 cent in sales tax revenue. After 2034, Open Space will continue to have 0.50 cent in sales tax revenue.

### Those OPPOSED say

1. The City will lack funds to purchase mineral rights to protect Open Space lands from fracking.
2. The two Open Space taxes will not expire until 2018 and 2019. Why put this up for a vote now, before a City Council election this fall will give us another council?

### **Boulder Question 2D** **Sales and Use Tax Extension** [For Transportation and General Fund]

Without raising additional taxes, shall the existing 0.15 cent city sales and use tax approved by the voters by Ordinance No. 7301, be extended beyond the current expiration date of December 31, 2019 until December 31, 2039, with 100 percent of the revenues collected to fund transportation construction and services, such as maintenance of pavement, construction of transportation infrastructure, transit service and other transportation purposes until December 31, 2029 and beginning January 1, 2030, 100 percent of the revenues collected to fund services such as fire, police, libraries, parks, recreation, human services and other general fund purposes?

### Major Provisions

If passed, Ballot Question 2D will extend the 0.15 cent sales and use tax expiring December 2019, for 20 years to 2039. The revenue will be used for ten years for transportation, from 2020 through 2029, and then for the General Fund for ten additional years, expiring in 2039.

### Background

City Council has referred proposals 2B, 2C, and 2D to the voters as a three-proposal package, as outlined in the “Background” that precedes 2B.

### Those IN FAVOR say

1. Our City funding is out of balance. Open Space taxes are diverting much-needed funds from other City services such as transportation, arts and even police and fire protection.
2. Even if Questions 2B and 2C pass, Open Space will continue, until 2034, to have 0.62 cent sales tax revenue to finish the vision plan for open space purchases. After 2034, Open Space will continue to have 0.50 cent in sales tax revenue for maintenance.

### Those OPPOSED say

1. The City will be unable to purchase mineral rights to protect Open Space lands from fracking.
2. The two Open Space taxes will not expire until 2018 and 2019. Why put this up for a vote now, before a City Council election this fall will give us another council?

### **Boulder Question 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?

**Major provisions**

An analysis by the City predicts acquisition costs of a municipal electric utility of between \$150 million and \$405 million. Question 2E would cap City debt for acquisition of Xcel assets and any lump-sum stranded costs to \$214 million, and provides that debt issuance costs, such as brokerage fees, must be comparable to “similarly situated utilities.” The municipal utility would maintain authority to increase its debt for other utility costs.

Question 2E limits service boundaries outside of the City based on safety and reliability, and ensures that City and non-city residents pay the same rates. Non-city customers could serve on the advisory electric utility board, which under 2E is explicitly tasked with recommending utility rates.

Finally, Question 2E allows for elections on utility issues at any general or special election.

If voters pass *both* Question 2E and the related proposal, Question 310, then whichever has *more* affirmative votes, 2E or 310, becomes law, and the other question is not implemented.

**Background**

City Council placed Question 2E on the ballot in response to concerns about service boundaries, governance, and acquisition and stranded costs associated with creating a municipal electric utility, and as an alternative to Ballot Question 310. According to Colorado law, when two alternative charter amendments are on the ballot, the one that is approved by voters and receives the highest number of votes takes effect.

As with City water, it seems likely that some non-city residents would be served by a future municipal utility. As part of Ordinance 7920, City Council adopted language to determine out-of-city neighborhoods’ preferred electricity provider and to accommodate those wishes through legislation, the Public Utilities Commission or other means.

**Those IN FAVOR say**

- 1. This ordinance allows the City to take the offensive, and it addresses the concerns about debt limits and the customers outside the City.
- 2. Even Colorado’s restrictive Taxpayer Bill of Rights doesn’t require public utilities that pay their debts through revenue from rates to go to voters for approval.
- 3. If the City suffered a severe flood in December, 2015 and the utility needed funds to rebuild portions of the system, it would not be able to put debt before the voters until November, 2017.

**Those OPPOSED say**

- 1. People want to know the final price of the utility before giving final approval. The City is saying it’s OK for voters to have some say on debt, but only at the beginning of the municipalization process.
- 2. The City is free to ask voters for a debt limit that would accommodate emergencies such as floods and only issue the debt if or when it is needed.
- 3. Without a City Council member to hear our concerns and represent us, county residents will always be underserved.

**BOULDER QUESTION 2F  
Negotiated or Private Bond Sales**

Shall Section 98, “Term of bonds - disposal of bonds” of the Charter of the City of Boulder be amended as described in Ordinance No. 7910 to give the City the option to sell bonds or other obligations by a negotiated or private sale when determined to be to the best advantage of the City?

**Major provisions**

Question 2F would amend City Charter Section 98 to allow city council to authorize a negotiated or private sale of bonds or other obligations,

according to the city manager’s recommendation. If amended, Section 98 would allow bonds or other obligations to be sold at, above, or below par, and to contain provisions for redemption prior to maturity, with or without payment of a premium.

**Background**

Currently, Charter Section 98 allows only competitive, public sale of bonds; the maximum rate of interest is fixed by ordinance, and bonds are sold to the highest bidder.

In a negotiated sale, an underwriter buys the entire bond amount at a price and interest rate that have been negotiated with the City, and then sells them to investors. Selection of the underwriter is through a request for proposals.

Section 98 now addresses only bonds, prohibits selling bonds below par, and does not mention early redemption. The proposed amendment would modernize the wording to “bonds and other obligations,” remove the obsolete price restriction, and provide for redemption prior to maturity.

Competitive and negotiated sales both have merits, depending upon circumstances. The competitive method has served the City well: the City has sold bonds that are not complex or unique, its bonds have been rated A or better, it has a long history of paying off its bonds, and it has not targeted participation in the sale.

Negotiated sale is the preferred method (1) for newer, complex, unrated, or lower-rated issues, especially taxable sales; (2) when the issuer needs to “tell its story,” i.e., explain how the bonds will be repaid, in order to get the best interest rate; and (3) when the issuer wants to offer some bonds locally.

Question 2F has been referred to voters by City Council. The proposal anticipates a future sale of electric utility bonds—new, unrated, and sought-after by Boulder investors. The proposed amendment is also of wider application as it

updates Section 98 with respect to current municipal financial practice.

**Those IN FAVOR say**

- 1. A future municipal energy utility might get better interest rates with a negotiated sale that would allow the City to tell the story of its utility, particularly when the utility won't yet have a bond rating.
- 2. With a negotiated sale the underwriter could set aside a portion of an issue for Boulder investors, something local financial people have requested.
- 3. Most cities are able to issue bonds through either a negotiated or competitive process now.

**Those OPPOSED say**

- 1. In negotiated bond sales, unscrupulous political contributions can influence the awarding of bonds to certain buyers.
- 2. The so-called "pay to play" fraud does not serve the interests of the public.
- 3. If negotiated bond sales are allowed, it should be harder for the city to offer them—maybe require a 2/3 vote of Council.

**BOULDER QUESTION 2G  
Qualifications for Appointment  
to City Commissions**

Shall section 130 of the Charter be amended pursuant to Ordinance No. 7914 to provide that city residents may be appointed to serve on city commissions even if they are not city electors, if they are at least eighteen years old and if they have resided in the city of Boulder for at least one year immediately prior to their appointment, and shall related changes be made to Charter Sections 74, 157, 172 and 185 so that qualifications for service on the Planning Board, the Parks and Recreation Advisory Board, the Open Space Board of Trustees and the Electric Utilities Board be consistent in this respect?

### Major Provisions

Question 2G would amend the City Charter by removing the city elector requirement for serving on city commissions. The proposal's effect would be to remove the U.S. citizenship requirement for service on advisory boards and commissions, retain the age requirement, and increase the residency requirement to one year.

### Background

Question 2G has been referred to voters by the City Council. Boulder now has about 17 advisory groups created by ordinance as provided by Charter section 130. Qualifications for serving on the four boards named in 2G are set in sections 74, 157, 172, and 185. In 2008 voters defeated a similar proposal to amend section 130 only.

An elector is a U.S. citizen, 18 years of age or older at the time of the next election, who has resided in the state and precinct thirty days prior to the election. Under 2G, eligible persons would include non-U.S. citizens who hold either a "green card" (permanent U.S. residents) or a temporary visa of some kind.

### Those IN FAVOR say

1. This proposal would allow expanded representation that would reflect the City's diverse population.
2. The City would benefit from empowering more people to contribute their ideas.
3. Boulder County and many other local governments in the U.S. do not require U.S. citizenship for similar service. Noncitizens without valid documentation are not likely to apply.

### Those OPPOSED say

1. This proposal would erode and dilute the concept of U.S. citizenship.
2. It would allow those with allegiance elsewhere to influence City government.
3. It would allow noncitizens with expired visas to apply, as well as those who entered the U.S. without documentation.

## BOULDER QUESTION 2H Oil and Gas Exploration Moratorium Extension

Shall Ordinance No. 7907 be amended to extend the current moratorium on new oil and gas exploration until June 3, 2018 and to set legal standards and the council voting requirements for lifting the moratorium amended pursuant to Ordinance No. 7915?

### Background

On June 4, 2013 the Boulder City Council adopted Ordinance No. 7907, an emergency ordinance imposing a moratorium until June 3, 2014, on applications for any City permit requesting oil or gas exploration or for any application for use review under Title 9 of the Boulder Revised Code for new "Mining Industries" involving oil and gas extraction or exploration. With the rapid growth of oil and gas exploration in the region, it has been cited that there are numerous unresolved scientific and legal issues regarding the effects of oil and gas exploration, including directional or horizontal drilling and hydraulic fracturing. This activity affects health and property. This ordinance also addresses the legal authority of a home rule city to protect the health and safety of its environment and citizens.

Several important scientific studies are underway regarding the public health and safety effects of oil and gas exploration and it may take three to five years before completion of these studies will provide sufficient data and analysis. There is also pending litigation involving legal authority of Colorado home rule cities to regulate oil and gas exploration and a moratorium would allow this to be resolved.

This ordinance is asking for an extension to the previous ordinance to broaden the scope and include applications for drilling permits on City of Boulder open space properties. Currently

there are no operators with active wells in the City of Boulder or on City Open Space, and there have not been for a number of years.

### Those IN FAVOR say

Oil and gas drilling and fracking is a dangerous industrial process that puts toxic emissions into the air, contaminates ground water, threatens public health and safety and reduces property values. A YES vote would prevent any new oil and gas development in the City of Boulder or on Boulder Open Space before June, 2018.

### Those OPPOSED say

There is no organized opposition at this time.

## BOULDER QUESTION 310

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?

### Major provisions

This ballot issue would require the City of Boulder to (1) seek voter approval of both a municipal utility's debt limit and the total cost of debt repayment before the utility issues any bonds; (2) include registered electors in the utility's service area who live outside the city limits of the City of Boulder in debt limit and repayment cost elections; (3) hold debt limit and

repayment cost elections for any bonds issued by the utility on the dates of general municipal elections, and (4) limit brokerage fees for the sale of bonds to one per cent (1%) of proceeds.

### Background

This is a citizens' initiative supported by those who are opposed to the City forming a municipal utility. An initiative needs 4,549 valid signatures, or 5% of the city's registered voters, to be placed on the ballot.

### Those IN FAVOR say

1. There are many deficiencies and overly optimistic assumptions used in the City of Boulder's analyses.
2. Xcel Energy can help the City of Boulder accomplish its energy and environmental goals at a lower cost than it would cost through a municipal utility.
3. County residents who will be included in the municipal utility's service area did not vote in the election held to decide whether to form a municipal utility.

### Those OPPOSED say

1. Requiring voter approval of the total cost of debt repayment means that the utility will have to guess the final interest rate because the vote will be held well before the bonds are sold. The utility will have to pay the approved rate even if the bonds could be bought at a lower rate on the open market. This requirement is more stringent than the requirements of TABOR.
2. Neither the City nor the utility has the power to hold an election that includes electors who live outside the City. Annexation of the affected areas of Boulder County or a change in State law would be required to hold such an election.
3. The term "brokerage fees" is not clearly defined and could lead to expensive litigation.