

## **BOULDER CITY BALLOT QUESTION NO. 8**

### **An Initiative to Amend the Boulder City Charter**

Shall Sections 8.1 and 15 of the Boulder City Charter be amended to provide that the City Attorney shall be elected in the same manner as the Mayor and Council member, for a term of four years to begin on the first regular business day of July following the election?

Yes . . . . .

No . . . . .

### **EXPLANATION**

All ballot questions seeking an amendment to the Boulder City Charter must receive an affirmative vote of the people in two consecutive elections. This question was presented to the voters for the first time at the general election in November of 2010. The question received an affirmative vote of the people, and is being placed on the general election ballot in June of 2011 for final approval.

A “YES” vote would amend Sections 8.1 and 15 of the Charter to provide that the City Attorney shall be elected in the same manner as the Mayor and Council member, for a term of four years to begin on the first regular business day of July following the election.

A “NO” vote would leave the Charter unchanged

### **ARGUMENT FOR PASSAGE**

The current City Charter of Boulder City provides that the City Attorney is an “at will” employee who serves the City at the pleasure of a simple majority of the City Council. The right of the People to choose by election those who work for them and represent their interests in government is a fundamental American right, specifically listed in the U.S. Constitution and upheld by the U.S. Supreme Court. The people of Boulder City should apply this right to the selection of their City Attorney. There are several sound reasons to make this change.

One of the duties of the City Attorney is to provide legal advice to the Council. An appointed City Attorney, dependent on the City Council for his job, will be reluctant to offer opinions which run counter to the desires of the majority of the Council. This would diminish his value to the City by limiting his ability or willingness to give independent legal advice based solely on the Law.

An elected City Attorney is accountable to the public rather than to the Council. This would enhance our system of checks and balances. It would remove the appearance of conflict of interest between the City Attorney’s duties to the City and any possible allegiances to or pressures from members of the City Council that could exist if he were appointed by that body. The result would be a City Attorney totally free to offer independent legal opinions without worrying about how any political disagreements with the Council might impact his position.

Having an independent City Attorney, free to do his work solely based on the laws of the United States and Nevada, and our City Charter as approved by Boulder City voters, is critical to the future of our community. The best way to guarantee the independence of the City Attorney is to have the people select the person who fills the position rather than have the position filled by a City Council appointment. Vote “YES” on this initiative.

*Submitted by Ballot Question Committee as provided for in NRS 295.217*

### **REBUTTAL TO ARGUMENT FOR PASSAGE**

The City Charter specifically outlines the duties of the City Attorney including legal advice to the Council and legal services to the City as a separate entity, as the Council may direct. Electing an attorney will not change these Charter mandated capacities. The City Attorney remains accountable to the City and to the Council whether elected or appointed.

Various minutes of City Council meetings confirm appointed City Attorneys often provide legal opinions with which the majority, or on some occasions the minority, of body members do not agree. When differences have occurred, the Nevada Attorney General was asked to review the matter and offer another opinion.

Numerous scandals in the Las Vegas area, which resulted in elected officials being indicted and/or convicted, disprove the theory an elected official is inherently more responsible than an appointed official to the electorate. While an elected attorney may be less influenced by the Council, the attorney is not free from political influence.

Trading one set of alleged pitfalls for another unknown set of pitfalls does not justify amending our City Charter.

*Submitted by Ballot Question Committee as provided for in NRS 295.217*

### **ARGUMENT AGAINST PASSAGE**

Electing our City Attorney could have several negative effects. First, with the three-year minimum requirement of law practice, an attorney with little to no municipal experience could be elected. Only three years of practice may leave an inexperienced, yet well spoken candidate, with insufficient knowledge of the Nevada Revised Statutes (NRS or state law), who is not well versed in issues affecting municipalities, to represent the City.

An elected attorney may find himself or herself in the position of taking a legal action based upon political allegiances rather than representing the City impartially and as a whole. An elected attorney may be tempted to give in to political leanings rather than doing what is right for the City.

The ballot question does not address compensation for an elected attorney which may include the high expense of *performing an outside study* to determine the new value of an elected City Attorney. Currently, per Section 8 of the City Charter, City Attorney salaries are determined by resolution of the Council.

This ballot question does not address the potential, and the remedies, of a City Attorney's dereliction in duties. Per Section 8 of the City Charter, the City Attorney is currently subject to review, suspension and removal only by a majority vote of the Council. City Charter Section 111.5 addresses elected members of the City Council being subject to a recall from office. This proposed amendment does not address recalls of elected City Attorneys. Presumably, elected attorneys would be subject to the time consuming recall process resulting in a derelict attorney potentially never being removed from office. Additionally, the recall process could require inordinate time spent by candidates campaigning rather than performing job duties. The City would also incur a substantial financial burden to hold a recall election for an elected City Attorney. The cost of a special election is estimated to be \$30,000 and could increase in subsequent years.

In summary, the proposed amendment does not adequately address all aspects of electing a City Attorney. Financial ramifications and liabilities exist should an elected City Attorney be subject to a recall. To address all contingencies of an elected staff official could be time consuming and expensive, with further amendments to the City Charter and City Code to satisfy all issues. Each new Charter amendment would necessitate *dual elections* to pass such changes, causing greater expenses and additional time to create this elected position.

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## **REBUTTAL TO ARGUMENT AGAINST PASSAGE**

The arguments against electing our City Attorney apply equally to the current system of appointing our City Attorney. For instance, because the three-year minimum requirement of law practice already exists, an attorney with little to no municipal experience could be *appointed*.

An appointed attorney may find himself or herself taking legal action based upon political allegiances. An appointed attorney may be *more* likely to give in to political pressure from those who have the power to fire him.

The City Attorney's salary is currently determined by the Council. That remains unchanged. There will be "high expense" for a study only if the politicians on Council want to waste the money on it.

All elected officials under Nevada law are subject to recall. Election gives any office holder independence – except from the public. Their jobs, pensions, and future employment opportunities depend upon performing with diligence and integrity. Experience with Nevada county attorney's shows re-election, not recall, is the rule.

Future change to the Code or Charter, if any, should be based on experience and need, not speculation and fear mongering.

We believe the City is best served if the City Attorney answers to the people instead of the City Council.

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