

BOULDER CITY BALLOT QUESTION NO. 2

A question proposing to amend the Boulder City Charter

Shall Section 8, paragraph 1.B. of the Boulder City Charter be amended to entirely repeal paragraph 1.B. and add a new paragraph 1.B.(1) as follows (Old language to be removed is shown in ~~strike through~~. New language to be added is shown in ***bold italic***):

~~B. Any City officer may be temporarily suspended with full pay at any time by a majority vote of the Council, but no City officer may be removed from office unless he has first been given an opportunity for a hearing before the Council, at his request, with not less than seven days prior notice of the time and place of the hearing. Such hearing may be either public or private, as requested by the officer, and at the hearing the officer may be assisted by his own legal counsel. Any action of the Council following such hearing shall be considered final and conclusive.~~

B. Any City officer may be temporarily suspended with full pay at any time by a majority vote of the Council, but no City officer may be removed from office unless he has first been given an opportunity for a hearing before the Council. The Council shall not hold a closed meeting to consider terminating such officer or to consider the character, alleged misconduct, professional competence, or physical or mental health of such public officer. The public officer may be assisted by his own legal counsel at the hearing. Any action of the Council following such hearing shall be considered final and conclusive. Written notice of the meeting shall be given to such officer in the manner set forth in NRS 241.033.

Yes

No

EXPLANATION

Section 8.1.B. of the Boulder City Charter is currently inconsistent with NRS 241.031 and 241.033. Section 8.1.B. of the Boulder City Charter has never been amended since the Charter was adopted in 1959. Since the time the Charter was adopted, Chapter 241 of the Nevada Revised Statutes, which contains what is commonly called the Nevada Open Meeting Law, has gone through a number of changes and amendments. The Charter allows closed meetings to allow the City Council to discuss terminating an appointed public official. The NRS does not allow closed meetings to discuss the character, alleged misconduct, professional competence, or physical or mental health of such public officer.

NRS 241.036 provides that any action taken in violation of the Open Meeting Law is void. Under that statute, if the City Council were to follow the current language of our Charter and allow a closed meeting to discuss terminating the employment of an appointed official, that would constitute "action taken in violation of" the Open Meeting Law and any action taken as a result of the violation would be void. The Charter Commission has therefore recommended that this part of the Boulder City Charter be amended to comply with the requirements of the Nevada Open Meeting Law.

Furthermore, the notice requirements in the Charter are inconsistent with the notice requirements set forth in NRS 241.033. In order to assure that the City Council takes action on such personnel matters in a manner consistent with Chapter 241 of the NRS, the Charter Commission has also recommended that the notice requirements of NRS 241.033 replace the notice requirements currently found in Section 8.1.B. of the Charter.

This is a question seeking an amendment to the Boulder City Charter. All ballot questions seeking an amendment to the Charter must receive an affirmative vote of the people in two consecutive elections. This question is being presented to the voters for the first time at the general election in November of 2008. If the question receives an affirmative vote of the people, it will be placed on the next regular municipal election ballot in June of 2009 for final approval.

A “YES” vote would cause the proposed Charter amendment to be placed on the June, 2009 General Municipal Election for final approval and would require that meetings of the City Council that are held to discuss appointed public officials be open to the public and that the notice requirements for such meetings be in compliance with NRS 241.033.

A “NO” vote would leave the Charter unchanged and inconsistent with State law.

ARGUMENT FOR PASSAGE

A “YES” vote on Question No. 2 is necessary to ensure transparency and honesty in Boulder City government. As the Charter is currently written, it is possible for a closed meeting to take place to discuss the termination, “character, alleged misconduct, professional competence, or physical or mental health” of an appointed officer.

Boulder City citizens have a right – a duty – to know that the most competent, able professionals are serving in our local government. By amending the Boulder City Charter to coincide with Nevada Open Meeting Law, citizens will be given notice of meetings scheduled to discuss the professional competence of Boulder City’s governing leaders.

In addition, it is incumbent upon the city government to follow the laws of the State of Nevada. The current Boulder City Charter is not worded to follow Nevada law. We must be diligent in assuring that Boulder City’s Charter is aligned with Nevada law. More specifically, the Nevada Open Meeting Law must be followed meticulously and an amendment to Boulder City’s Charter will put forth the legal verbiage to ensure that our government follows Nevada law.

The City Council needs to continue to become as transparent and accountable to the citizens of Boulder City as possible. A vote of “YES” on Question No. 2 is a step in the right direction.

Submitted by Ballot Question Committee as provided for in NRS 295.217

REBUTTAL TO ARGUMENT FOR PASSAGE

Notwithstanding the laws as set forth in the NRS, closed meetings allow more open dialog and protect the privacy of the public officer.

Submitted by the City Clerk as provided for in NRS 295.217

ARGUMENT AGAINST PASSAGE

The Nevada Revised Statutes (NRS) mandate that the City Council hold open meetings to consider terminating a public officer or “to consider the character, alleged misconduct, professional competence, or physical or mental health” of such public officer.

Although an argument could be made against this mandate in order to protect the privacy of an individual subject to such a meeting and to allow for a more open dialog of issues in a closed meeting, it would be improper to argue against upholding the laws as set forth in the NRS.

Submitted by the City Clerk as provided for in NRS 295.217

REBUTTAL TO ARGUMENT AGAINST PASSAGE

Nevada Open Meeting Law protects the rights of appointed officials by requiring that meetings are held in a public setting to discuss the termination, “character, alleged misconduct, professional competence, or physical or mental health” of an appointed officer.

Amending Boulder City’s Charter to be consistent with Nevada law is prudent and keeps Boulder City’s Council transparent and accountable to both its appointed officials and its citizens. Vote “YES” on Question No. 2.

Submitted by Ballot Question Committee as provided for in NRS 295.217

DESCRIPTION OF ANTICIPATED FINANCIAL EFFECT

Any expense related to this question will not require the levy or imposition of a new tax or fee or the increase of an existing tax or fee.