



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: September 1, 2020**

**AGENDA TITLE**

Third reading and consideration of a motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenant's legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Thomas A. Carr, City Attorney

**EXECUTIVE SUMMARY**

The purpose of this agenda item is for council to place the No Evictions Without Representations on the ballot for the November 3, 2020 election. At the August 18, 2020 meeting, the council amended ordinance 8412, replacing what the petitioners committee circulated as a fee with a tax and allowing revenues to also be used for rental assistance to persons that may be facing eviction. After the August 18 meeting, the committee of the petitioners have withdrawn its petition in exchange for this revised version being placed on the November 3, 2020 election.

## BACKGROUND

At the July 28, 2020 council meeting, council accepted the city clerk's certificate of sufficiency of a petition with the title No Eviction Without Representation or NEWR.

On August 4, 2020, the council did the first reading of ballot title and implementation Ordinance 8411 that would place that measure before the voters at the November 3, 2020 election; and if the voters approved would amend the Boulder Revised Code as provided. The ordinance uses the exact language submitted by the petition committee.

The council also passed on August 4, 2020 first reading Ordinance 8412 (**Attachment A**) as an alternative measure. This ordinance incorporated a rental assistance program. This proposed ordinance includes changes proposed by the committee to provide for such a program.

At the August 18, 2020 meeting council held a public hearing and amended the ordinance. It includes changes that were discussed and approved by the petitioners committee that convert the revenue generating portion of the program from a fee to a tax and adds that it is also purpose of the revenue to provide rental assistance to persons that may otherwise be vulnerable to evictions.

The petitioner committee submitted to the city clerk a statement of withdrawal effective on final passage of ordinance 8412. The statement can be found in **Attachment B** of this Memorandum.

## STAFF RECOMMENDATION

### Suggested Motion Language

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance 8412 submitting to the qualified electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of raising taxes in the City of Boulder by the adoption of a rental licensing excise tax to fund a program to provide legal representation to tenants who face the loss of housing in eviction and administrative proceedings; provide tenants legal services and assistance coordinator to administer the program; create a tenants' committee comprised of five members paid a \$1,000 per year stipend; and use funding for rental assistance for persons that are vulnerable to eviction; and in the event that the ballot question passes, a council adopted ordinance to implement the program and tax; setting forth the ballot title, and specifying the form of the ballot and other election procedures; and setting forth related details.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Keeping people housed should have a beneficial effect on the economy. The annual fee could be passed on to tenants which could have a negative impact.
- Environmental – None identified.
- Social – Housing is a basic human requirement. If adopted the proposed measures could help to keep people housed.

## OTHER IMPACTS

- Fiscal – The proposed measure would require support and administration by departments that will receive no funding from the new fee. This will have a small, negative effect on the city budget.
- Staff time – Implementing the proposed partnership will require staff work that is not part of any workplan.

## ANALYSIS

Charter sections 37 through 40 provide for amending the Boulder Revised Code by initiated ordinances. Section 38 requires that a petition signed by a number of individuals equal to ten percent of the average number of registered electors who voted in the last two municipal elections. Based on the participation in the 2017 and 2019 municipal elections for this election a petition required 3,336 signatures. On July 6, 2020, Acting City Clerk Pam Davis certified that the NEWR committee had submitted 3,589 valid signatures. Council accepted this certification at the July 28, 2020 meeting.

Charter section 40 provides that when a petition is certified, unless the committee withdraws the petition, the council shall take final action setting the ballot title and placing the measure on the ballot. The charter does not provide council or the committee with any authority to change a measure that has met the signature requirement and been certified. Council, however, has the authority to place a measure directly on the ballot.

The committee has withdrawn its petition in favor of the council putting proposed ordinance 8412 on the ballot. A copy of the communication withdrawing the petition is included in this Memorandum (**Attachment B**).

Ordinance 8412 is now a tax measure that meets the requirements of the taxpayer bill of rights in the state constitution. This will ensure that the revenue generated by this program will meet the revenue requirements for taxation in the state constitution. The revenue is dedicated to paying for the costs of the program and for rental assistances to persons that may be facing an eviction.

## **ATTACHMENTS**

A – Proposed Ordinance 8412 – No Eviction Without Representation

B – Certificate of the committee withdrawing its petition

ORDINANCE 8412

AN ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF RAISING TAXES IN THE CITY OF BOULDER BY THE ADOPTION OF A RENTAL LICENSING EXCISE TAX TO FUND A PROGRAM TO PROVIDE LEGAL REPRESENTATION TO TENANTS WHO FACE THE LOSS OF HOUSING IN EVICTION AND ADMINISTRATIVE PROCEEDINGS; PROVIDE TENANT'S LEGAL SERVICES AND ASSISTANCE COORDINATOR TO ADMINISTER THE PROGRAM; CREATE A TENANTS' COMMITTEE COMPRISED OF FIVE MEMBERS PAID A \$1,000 PER YEAR STIPEND; AND USE FUNDING FOR RENTAL ASSISTANCE FOR PERSONS THAT ARE VULNERABLE TO EVICTION; AND IN THE EVENT THAT THE BALLOT QUESTION PASSES, A COUNCIL ADOPTED ORDINANCE TO IMPLEMENT THE PROGRAM AND TAX; SETTING FORTH THE BALLOT TITLE, AND 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. On June 5, 2020, a petition committee presented a petition with sufficient signatures of registered electors to initiate a vote on proposed amendments to the Boulder Revised Code pursuant to section 39 of the Boulder Home Rule Charter. Under Charter section 40, the City Council is required to set the ballot title for the proposed amendment.

Section 2. A general municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 3, 2020.



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

9 YES/FOR \_\_\_\_

10 NO/AGAINST \_\_\_\_

11 Section 4. If a majority of all the votes cast at the election on the measure submitted are  
12 for the measure, the measure shall be deemed to have passed and the city council further amends  
13 the Boulder Revised Code as follows:

14 Amending Chapter 2 as follows:

15 **Chapter 2 - Landlord - Tenant Relations, No Evictions Without Representation.**

16 **12-2-1. - Legislative Intent.**

17 The purpose of this chapter is to supplement the provisions of state law governing the  
18 rights and duties of landlords and tenants of residential property in the City, including the  
19 provision of legal representation *and rental assistance* to tenants in legal and administrative  
20 proceedings where such housing is imperiled.

21 Whereas, in the landmark case Gideon v. Wainwright, the United States Supreme Court  
22 declared that reason, reflection, and the fair administration of justice require that persons facing  
23 the loss of their liberty in criminal proceedings shall have the right to legal counsel;

24 Whereas, this protection does not extend to legal proceedings where tenants face the  
25 serious hardship of being forced out of their homes;

Whereas in the City of Boulder, tenants do not have a right to counsel in such  
proceedings and most tenants face such proceedings without legal representation;

Whereas, in August of 2017 the City of New York enacted local legislation to provide  
tenants in that City with legal representation in eviction proceedings;

Whereas, in 2018-2019 the cities of San Francisco, Newark, Cleveland, and Philadelphia  
also enacted legislation to provide tenants in those cities with legal representation in eviction  
proceedings; and

1 **Whereas, in some instances the provision of rental assistance to tenants is an**  
2 **efficacious tool to increasing housing security.**

3 Therefore the people of the City of Boulder declare that it is in the policy of the City of  
4 Boulder that Boulder tenants shall have a right to legal representation in eviction and  
5 administrative proceedings where they face the loss of housing and the City shall provide such  
6 representation to tenants to assist in the fair administration of justice **and the City shall also**  
7 **administer a rental assistance program to tenants faced with such proceedings.**

## 8 **12-2-2. - Definitions.**

9 The following terms used in this chapter have the following meanings unless the context  
10 clearly indicates otherwise:

11 Bank means a bank, credit union or similar institution that accepts deposits of money and  
12 insures such funds through the Federal Deposit Insurance Corporation, the National Credit Union  
13 Association or similar institution.

14 Covered proceeding means legal proceedings to evict a tenant from their place of  
15 residence pursuant to C.R.S. 13-40-101 *et. seq.*, counterclaims related thereto, the termination of  
16 Section 8 housing assistance, and appeals arising from any of the foregoing.

17 Interest means simple interest on the full amount of the security deposit on deposit.

18 Legal representation means full scope representation provided by a licensed attorney to a  
19 tenant in a covered proceeding. This includes, but is not limited to, filing responsive pleadings,  
20 appearing on behalf of the tenant in court, administrative proceedings, or alternative dispute  
21 resolution, and providing legal advice, advocacy, and assistance associated with such matters,  
22 and necessary fees and costs related thereto.

23 Security deposit means any advance or deposit of money, regardless of its denomination,  
24 the primary function of which is to secure the performance of a rental agreement for residential  
25 premises or any part thereof.

Tenant means any occupant of residential property, including but not limited to, any  
building, structure, vacant land, or part thereof offered for lease or rent for residential purposes,  
who is a respondent or defendant, or who has legal standing to be a respondent or defendant, in a  
covered proceeding.

## 12-2-4. - Written Disclosures Required.

(a) No operator shall allow any person to occupy a rental property as a tenant or lessee  
or otherwise for valuable consideration unless and until that operator has satisfied  
each of the following conditions:

(1) The operator has executed and provided to the tenant a copy of a written lease,  
rental agreement, set of site rules or other written instrument containing the  
following information:



- 1 (A) The maximum occupancy levels permitted in the rental unit;
- 2 (B) Notice of the provisions contained in Sections 5-3-11, “Nuisance Party
- 3 Prohibited,” 5-6- 6, “Fireworks,” 5-4-12, “Depositing Trash on Property in
- 4 Violation of Sign,” and 5-4-16, “Outdoor Furniture Restrictions,” and
- 5 Chapter 5-9, “Noise,” B.R.C. 1981;
- 6 (C) Notice of the provisions contained in Sections 6-2-3, “Growth or
- 7 Accumulation of Weeds Prohibited,” 6-3-3, “Trash Accumulation
- 8 Prohibited,” 6-3-12, “Bear-Resistant Containers Required,” and 8-2-13,
- 9 “Duty to Keep Sidewalks Clear of Snow,” B.R.C. 1981; Section 6-3-3(b),
- 10 relating to the responsibility of every owner, manager or operator of rental
- 11 property to maintain a valid contract with a commercial trash hauler
- 12 providing for the removal of accumulated trash from the property, and
- 13 Paragraph 7-6-13(a)(1), B.R.C. 1981, concerning parking prohibited on
- 14 sidewalks;
- 15 (D) The names of those individuals permitted, pursuant to the tenancy
- 16 agreement, to occupy the rental unit;
- 17 (E) Notification to tenants that violation of the city's noise regulation
- 18 requirements or residency within the rental unit of persons other than those
- 19 lawfully occupying the unit pursuant to the tenancy agreement is cause for
- 20 the termination of the tenancy;
- 21 (F) Notification that interest must be paid to tenants upon any security deposit
- 22 collected pursuant to the provisions of Sections 12-2-2, “Definitions,” and
- 23 12-2-7, “Interest Rate On Security Deposits,” B.R.C. 1981;
- 24 (G) Notification to tenants of the date and nature of any violations of law during
- 25 the preceding twenty-four months for which the owner, manager or operator
- has received written notice of violation pursuant to Section 10-2.5-6,
- “Required Procedures Prior to Commencement of Public Nuisance Action,”
- B.R.C. 1981; ~~and~~
- (H) Notification of the provisions contained in Sections 5-10-6, “Marijuana
- Odor Emissions,” and Paragraphs 6-14-13(a)(6) and 6-16-13(a)(4), B.R.C.
- 1981, prohibiting possession of more than six marijuana plants without a
- license; ~~and~~
- (I) Notification to tenants of their right to legal representation and the
- availability of rental assistance provided in B.R.C. 12-2-9(a), including a
- complete copy of the text of that Section, with the use of the language in the
- form created, this section being mandatory.

Adding a new Section 12-2-9 as follows:

**12-2-9. - No Evictions Without Representation.**

- (a) Provision of Legal Representation and Rental Assistance. The City of Boulder
- shall establish, run, and fully fund a program to provide legal representation and/or
- rental assistance for all tenants within the city who face a covered proceeding. This
- legal representation shall be available to a tenant immediately after the tenant is
- served with a notice to quit or demand for possession pursuant to C.R.S. 13-40-101.

et. seq., or a notice of termination of Section 8 housing assistance, and shall last at least until such time as the notice to quit, demand for possession, or unlawful detainer complaint is withdrawn, the case is dismissed, a final judgment in the matter is entered, or the Section 8 housing assistance termination proceedings are concluded. Written notification of this right to legal representation and how to access it must be provided by the landlord to a tenant at the time the right to legal representation attaches as described under this Section. The notice must be in the same form as required by B.R.C. 12-2-4(a)(1)(I).

(b) Implementation. The city manager shall promptly take all necessary steps to fully implement the provisions of this Section as soon as practicable, but not more than 12 months after the effective date of this ordinance. The city shall have no obligation to provide legal services under this Section where a state or federal program provides full scope legal representation to a tenant facing eviction proceedings as a matter of right.

(c) Tenants' Committee. A Tenants' Committee is created to ensure that the legislative intent of this Section is fulfilled. Specifically, the Tenants' Committee shall oversee the **Tenants' Legal Services and Assistance Coordinator** and the legal service providers engaged to provide the services and **administer the rental assistance program provided for** herein, and shall advise the City Manager on its opinion of the merit and fitness of the **Tenants' Legal Services and Assistance Coordinator** for the purpose of informing and guiding the city manager in appointing and retaining the **Tenants' Legal Services and Assistance Coordinator**. The Tenants' Committee shall consist of five members who are tenants in the city of Boulder and do not own real property. The City shall endeavor to ensure that the Committee membership is reflective of the racial, gender, and sexual orientation of the City's tenants. Committee members shall be disqualified and replaced as soon as practicable in the event that they cease to be qualified to serve on the committee. Committee members are to be paid a stipend of \$1,000 per year to be adjusted annually for inflation. The City Manager's office and City Attorney's office shall provide staff support to the Committee and **Tenants' Legal Services and Assistance Coordinator**.

(d) **Tenants' Legal Services and Assistance Coordinator. The Tenants' Legal Services and Assistance Coordinator shall serve at the pleasure of the City Manager and can be selected from the City of Boulder's internal staff. The Tenants' Legal Services and Assistance Coordinator shall be responsible for contracting with and supervising legal service providers, including but not limited to non-profits, private law firms, and private attorneys, to ensure the provision of the legal representation provided for herein and the day-to-day responsibilities related thereto. The Tenants' Legal Services and Assistance Coordinator shall also be responsible for administering a rental assistance program for tenants involved in a covered proceeding. The Tenants' Legal Services and Assistance Coordinator may partner with non-profit organizations to facilitate the rental assistance program as well if it serves the purpose of maximizing the efficacy and reach of the rental assistance program. The Tenants' Legal Services and Assistance Coordinator shall make its best efforts to allocate and facilitate the provision of legal representation and/or rental assistance to tenants in covered proceedings to maximize the housing security of said tenants. The Tenants' Legal Services and**

- 1 **Assistance** Coordinator shall keep the Tenants' Committee informed as to its  
2 fulfilment of its responsibilities and shall be responsive to requests for information  
3 and inquiries from the Tenants' Committee.
- 4 (e) Reporting. No later than September 1, 2021 and annually by each September 1  
5 thereafter, the **Tenants' Legal Service and Assistance** Coordinator shall submit to  
6 the Mayor, and city manager, and post online, a review of the program established  
7 pursuant to this Section and information regarding its implementation, to the extent  
8 such information is available, including, but not limited to:
- 9 (1) The estimated number of individuals who experienced a covered proceeding;  
10 (2) The number of individuals who received legal representation **and/or rental**  
11 **assistance** disaggregated by the following characteristics of such individuals:  
12 (A) Postal code of residence;  
13 (B) Age of head of household;  
14 (C) Household size;  
15 (D) Estimated length of tenancy;  
16 (E) Approximate household income;  
17 (F) Receipt of ongoing public assistance at the time such legal services were  
18 initiated;  
19 (G) Tenancy in rent-regulated housing; and  
20 (H) Tenancy in housing operated by the Boulder city housing authority.
- 21 (3) Outcomes immediately following the provision of full legal representation, as  
22 applicable and available, including, but not limited to, the number of:  
23 (A) Case dispositions where a case was dismissed or was otherwise decided  
24 substantially in favor of the tenant;  
25 (B) Case dispositions where judgment for possession in favor of landlord was  
entered;  
(C) Case dispositions where a stipulation agreement, or other similar  
agreement, was made preventing the entry of judgment for possession;  
(D) Case dispositions where a stipulation agreement, or other similar  
agreement, was made providing a tenant with an opportunity to vacate a  
judgement for possession at a later date;  
(E) Case dispositions where a tenant was required to vacate a residence, but  
was provided additional time to vacate and, in such cases, the amount of  
additional time provided to such tenants; and  
(F) Case dispositions that otherwise resulted in a tenant vacating a residence  
prior to the end of their lease term; and  
(G) Instances where the attorney was discharged or withdrew.
- (4) Orders for possession filed in county court, writs of restitution issued in county  
court in forcible entry and detainer proceedings, and residential evictions  
conducted by the county sheriff.
- (f) Funding. The spending obligations required by this Section are to be funded  
through the no eviction without representation by the tax levied pursuant to Chapter  
3-20 "Rental License Excise Tax," B.R.C. 1981.
- (g) Amendment and Rulemaking. The Boulder City Council may amend this Section,  
and the City Manager may supplement the provisions of this Section through  
rulemaking, if such amendment or rulemaking serves the purpose of ensuring and

1 effectuating the provision of legal representation *and/or rental assistance* to tenants  
2 faced with legal proceedings imperiling their homes.

3 (h) Severability. If any provision of this Section or any application thereof to any  
4 person or circumstance is held invalid, such invalidity shall not affect any provision  
5 or application of this Section that can be given effect without the invalid provision  
6 or application. To this end, the provisions of this Section are severable.

7 Adding a new Chapter 3-20 as follows:

8 **Chapter 20 - Rental License Excise Tax.**

9 **3-20-1. - Findings and Purpose.**

10 An excise tax on each dwelling unit that is not exempt from the rental license  
11 requirement will be used to fund legal representation for persons that may be subject to an  
12 eviction proceeding and to provide funding for rental assistance for persons that may be facing  
13 an eviction or need emergency rental assistance.

14 **3-20-2. - Imposition and Rate of Tax.**

15 There is levied and shall be paid and collected an excise tax of \$75 per year for each  
16 dwelling unit that is required go get a rental license by the city, unless it is exempt from the tax  
17 by Section 3-20-5, B.R.C. 1981.

18 **3-20-3. - License holder Liable for Tax.**

19 The rental license holder is responsible for payment of the tax.

20 **3-20-4. - Definitions.**

21 The definitions in Chapter 12-2, “Landlord-Tenant Relations, No Eviction Without  
22 Representation,” B.R.C. 1981, shall apply to this Chapter.

23 **3-20-5. - Exemptions.**

24 The tax imposed by this Chapter shall not apply to any rental license if associated with  
25 any dwelling unit that is exempt from a rental license in Section 10-3-2, B.R.C. 1981.

**3-20-6. - Dedicated Revenues.**

The revenues from this sales tax shall be designated for the administrative cost of the tax,  
and once that obligation has been fulfilled, used for implementation and administration and  
enforcement of a program to provide representation to tenants who face the loss of housing in  
eviction and administrative proceedings, to provide a Tenant’s Legal Services and Assistance  
Coordinator to administer the program; to create a tenants’ committee comprised of five  
members paid a \$1,000 per year stipend; and to pay any related expenses; and to use funding for  
rental assistance for persons that are vulnerable to eviction.

1 **3-20-7. - Tax Increase.**

2 The city council is authorized to increase the annual excise tax rate by an amount not to  
3 exceed the Colorado consumer price index or a similar index that is tied to the annual rate of  
4 inflation in the state or Denver metropolitan area.

5 Section 5. The election shall be conducted under the provisions of the Colorado  
6 Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981, and this  
7 ordinance.

8 Section 6. The officers of the city are authorized to take all action necessary or  
9 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
10 conduct the election for the city.

11 Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
12 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
13 provisions of this ordinance.

14 Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
15 the residents of the City, and covers matters of local concern.

16 Section 9. The City Council deems it appropriate that this ordinance be published by title  
17 only and orders that copies of this ordinance be made available in the office of the city clerk for  
18 public inspection and acquisition.

1 INTRODUCED, READ ON FIRST READING AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 4th day of August 2020.

3  
4 \_\_\_\_\_  
Sam Weaver,  
Mayor

5  
6 Attest:

7 \_\_\_\_\_  
8 Pamela Davis,  
City Clerk

9  
10 READ ON SECOND READING, AMENDED, this 18th day of August 2020.

11  
12 \_\_\_\_\_  
Sam Weaver,  
Mayor

13  
14 Attest:

15 \_\_\_\_\_  
16 Pamela Davis,  
City Clerk

17  
18 READ ON THIRD READING, PASSED AND ADOPTED, this 1st day of September  
19 2020.

20 \_\_\_\_\_  
21 Sam Weaver,  
Mayor

22 Attest:


23 \_\_\_\_\_  
24 Pamela Davis,  
City Clerk

To The Office of the City Clerk of Boulder, Colorado,


We, the members of the Petition Committee for the No Eviction Without Representation Initiative, vote to certify to the city clerk the submission of the amended ordinance 8412, with file title "o-8412 1st Rdg NEWR TABOR (petitioners option v-2)," presented to city council via the council hotline on 8/18/20 to the voters of Boulder.

 8/19/20  
Ray Arango,

 8/19/2020  
Meagan Arango

 8/19/20  
Austin Bennett

 8/19/20  
Amanda Mercado

 8/19/2020  
Carl Perez