

July 14, 2020

To: Boulder City Council and the Boulder community

From: Petitioners for the "Citizen's Conditions for the Annexation of CU South"

RE: The City Attorney's Arbitrary, Capricious, and Unfair Petition Disaster

Council Members:

On June 16, 2020 you voted to ignore years of expert advice and proceed with expensive and inadequate flood mitigation at the property known as CU South. On June 18, 2020 our group of five petitioners (which includes two former city council members) submitted a charter amendment petition titled "Citizen's Conditions for the Annexation of CU South" to the City Clerk requesting approval as to its form so that we could collect signatures for the 2020 election.

We submitted our petition based on information published in the Colorado Constitution that establishes rules for charter amendment petitions AND based on information published on the City of Boulder's web site at the time. Both of these sources indicated that the deadline for submitting signatures was Aug. 5, 2020 and we acted in good faith that our request would be honored promptly according to established and published rules. As petitioners we realized that we would not have the full 90 days to collect signatures granted in state statute, but with a ready group of 25 volunteers we were ready to try. Unfortunately, we were never even granted the opportunity to collect signatures.

On June 29 we received a letter from Acting City Clerk Pam Davis that stated:

*"Thank you for submitting your charter amendment initiative petition for review. Our comments are as follows:*

- Please note that initiatives are limited to legislative matters. Much, if not all, of your proposed amendment is administrative in nature and, therefore, inappropriate for the initiative process.*
- The deadline for submitting initiative petitions was June 5.*

*The petition form is not approved for circulation for the 2020 November ballot. You may submit your initiative for consideration for the 2021 ballot.*

*We would advise that you seek independent legal advice from an attorney admitted to practice in Colorado and competent to advise on election matters."*

We were taken aback by this letter because we had simply requested that our petition be approved for form, a standard procedure. The response from Ms. Davis not only had a completely different due date than the state constitution and the city's own web site, but she also chose to comment on the content of our measure and refused to approve it to form. Our responses and questions were answered not by Ms. Davis, but by City Attorney Thomas Carr who it became apparent was actually the one making the decision, not Ms. Davis.

Mr. Carr ultimately explained in an email dated June 30, "The memo on our website is incorrect." Despite this admitted error and obvious unequal treatment given to other groups actively collecting petitions for charter amendment measures, Mr. Carr refused to change his mind and refused to approve our petition as to form for the 2020 ballot.

Even though the petition process should be easily navigable by competent citizens such as ourselves, we did consult with several attorneys and initially filed an appeal of the City's decision. We were granted a hearing date of July 15, but we ultimately (and with great regret and consternation) decided to drop the appeal because even if we were to prevail there simply will not be enough time to collect the approximately 9,000 signatures by Aug. 5 as required by state statute for the 2020 election.

The City of Boulder Charter (Section 137 – Amendments) states unequivocally that the charter may be amended based on provisions in the Colorado Constitution. There are no exceptions. The City Attorney has acted in an arbitrary and capricious manner granting some citizens rights to collect signatures under special rules while denying the same privilege to others following the same published rules. He has also violated the City Charter and State Constitution. In doing this the City Attorney has cast great confusion over our election process. His behavior and attitude towards the petitioners (as he was violating our constitutional rights) was condescending and purposefully unkind from the outset and his reading of Colorado Law is a disgrace.

City Attorney Thomas Carr has proven that he cannot be trusted to be a fair and independent arbiter of city election processes. He has produced rules that do not conform to the Colorado Constitution and relevant state statutes, and he has shown favoritism towards certain petitions and groups, approving their petitions as to form and putting them before the city council for ballot consideration. His decisions have been arbitrary, capricious, and blatantly unfair.

To rectify this situation, we respectfully request that Mr. Carr be removed from all duties pertaining to city election matters, effective immediately. He has shown that he cannot be trusted to do his job (or guide others) promptly and fairly. This is a failure of great significance for the citizens of Boulder that impacts our constitutionally guaranteed right to petition the government. We firmly believe that Boulder should no longer accept Mr. Carr's authority in these matters.

The City of Boulder should follow the Colorado Constitution and relevant state statutes when it comes to charter amendment petitions. We can and must do much better in 2021.

Sincerely,

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