



STUDY SESSION MEMORANDUM

TO: Mayor and Members of City Council

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DATE: May 9, 2024

SUBJECT: Potential Ballot Measures

EXECUTIVE SUMMARY

The purpose of this item is to provide information, options and recommendations for November 2024 ballot measures, including to:

1. Provide recommendations to the full council from the Charter Review Committee regarding potential City Charter amendment ballot measures.
2. Provide recommendations from the Financial Strategy Committee to the full Council on potential tax ballot measures.
3. Provide recommendations from the Boards & Commissions Committee to the full council on timing of implementation of changes from the boards and commissions assessment.
4. Provide an update on city petitions that are circulating for signature.
5. Report on potential ballot items for the state and region.

The following is a summary of the potential ballot items and the recommendations for next steps:

From the Charter Committee:

Ballot Item Proposal	Committee Recommendation
Charter Section 9 – Add Executive Sessions	Split support
Charter Section 7 – Increase council pay	Split support
Charter Section 4 – Council members cannot hold more than one elected office	Split support
Charter section 5 – Add Ranked Choice voting for council members	Split support
Charter Section 26 – Increase petition signatures for council candidates	Support

From the Financial Strategy Committee:

Ballot Item Proposal	Committee Recommendation
Residential Vacancy Tax	Not for 2024, seeking council input on whether to research
Commercial Vacancy Tax	Not for 2024, seeking council input on whether to research
Tax on Property Owners with 4+ Dwelling Units	Not for 2024, seeking council input on whether to research
Sales Tax Exemption on Food for Home Consumption, with revenue offset	Not for 2024, seeking council input on whether to research
Behavioral Health Tax	Not for 2024, seeking council input on whether to research

From the Boards & Commissions Committee:

Ballot Item Proposal	Committee Recommendation
Charter Section 130/Others – Revise Board & Commission terms and requirements	Seeking council input on whether to proceed now or wait until next year

Following directions from this study sessions, staff will draft any ballot measures desired for council consideration. The first reading and public hearing of proposed ballot measures is currently scheduled for July 18, 2024, the second reading and public hearing on August 1, 2024, which allows time for a third reading on August 15, 2024, if needed. The last regular council meeting date that council may approve ballot measures is August 15, 2024. Ballot measures must be certified to Boulder County by September 6, 2024.

QUESTIONS FOR COUNCIL:

1. What ballot items related to charter changes would council wish to proceed and direct staff to research and draft?
2. Does council agree with the Financial Strategy Committee recommendation to not consider any tax measures in 2024 but consider some for the Long-Term Financial Strategy? If yes, which potential tax

- measures should be researched and considered as part of the City's Long-Term Financial Strategy?
3. Does council support the recommendation to create a multi-year schedule of planned tax measures within the Long-Term Financial Strategy?
 4. Does council wish to implement any charter changes based on the boards & commissions assessment in 2024?
 5. Does council have any questions on city petitions or other ballot items within the region?

ANALYSIS

Section 1. City Council Charter Review Committee recommendations for matters be brought forth this election cycle:

1. Limited executive session availability for sensitive actions

Currently, City Council cannot hold executive sessions. Charter Section 9 states: "*All meetings of the council or committees thereof shall be public.*"

The potential change would be to modify section 9 to allow for executive sessions. From 2014 to 2017 council had a limited authority for executive sessions related to Municipalization legal strategy. This authority was approved by voters in 2014 with 56% support. An extension of this authority was denied by voters in 2017 with 56.5% against.

Authority for executive sessions is in state statute §24-6-402(4)(a), C.R.S., Executive Sessions *can* be called for:

- Purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest.
- Conferences with an attorney for the public entity for the purpose of receiving legal advice on specific legal questions.
- Matters required to be kept confidential by Federal or State law or rules or regulations.
- Specialized details of security arrangements or investigations.
- Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.
- Personnel matters, identifying the person or position to be discussed.
- Consideration of any documents protected by the mandatory nondisclosure provisions of the Open Records Act.

2. Increase council pay

City Council members are compensated per meeting up to fifty-two meetings per year, for a maximum possible pay of \$12,695.28. Council pay and benefits are defined in Charter Section 7: "*Council members and the mayor shall receive as compensation \$100.00 per meeting for fifty-two meetings per calendar year, plus an annual escalation each January 1 in a percentage equivalent to any increase over the past year in Change the Consumer Price Index (All Items) for the statistical area which includes the city maintained by the United States Department of Labor, Bureau of Labor Statistics; this amendment shall become*

effective January 1, 1990. Council members serving on January 1, 2022 and thereafter, and the mayor elected in November 2023 and thereafter, may elect to receive benefits under the same terms and conditions that are available to full-time city employees including without limitation participation in city health, vision, dental, and life insurance plans. This compensation shall be averaged over the calendar year and paid on the same schedule as city employees, or such other schedule as determined by the City Manager.”

This possible charter amendment would increase council member compensation in a manner similar to the compensation provision enacted by voters in Fort Collins in 2022.

Compensation for council members could be based on a percentage of the Area Median Income (AMI) for a single-person household in the Boulder County Metropolitan Statistical Area, as determined and adjusted annually by the U.S. Department of Housing and Urban Development. This would be similar to a change approved in 2022 by the voters in Fort Collins for their city council. In Fort Collins, the compensation is now 75% of the AMI for mayor, 60% of the AMI for the mayor pro tem, and 50% of the AMI for other council members.

If that same methodology of Fort Collins were followed for Boulder, in 2022, the Boulder County AMI for a single person household was \$87,800. Using the Fort Collins percentages:

50% AMI = \$43,900

60% AMI = \$52,680

75% AMI = \$65,850

By comparison, Boulder's current council compensation is less than 15% of the single-person AMI. The Charter Committee is not yet recommending particular percentages of the AMI for Boulder's council compensation, which could be the same as the Fort Collins percentages, or different percentages.

At the study session on May 9, the Charter Committee will discuss with council whether to consider a pay increase, and if yes, whether an AMI-based approach to future council compensation is appropriate and, if so, what AMI percentages council would like to consider presenting to Boulder voters this fall.

Copies of the compensation study presented to the Fort Collins city council in May 2022 and that city's November 2022 ballot measure can be found in **Attachments A and B** to this memo.

3. Not allowing a Council Member to hold more than one public office

Charter Section 4 outlines the qualifications of council members and mayor. It does not prohibit a council member from holding more than one elected office. It states: *“No person shall be eligible to office as council member or mayor unless, at the time of the election, such person is a qualified elector as defined by the laws of the State of Colorado, at least twenty-one years of age, and shall have resided in the City of Boulder for one year immediately prior thereto. No person shall be eligible to the office of a council member if such person has previously been elected to three or more terms of office. No person shall be eligible to the office of mayor if such person has previously served eight years as mayor, or*

if such person has previously served three terms as a council member and four years as mayor.”

The possible charter change would be to add to the charter a prohibition on a city council member also holding any other elected office.

4. Ranked choice voting for Council member election

In 2020, voters approved a ballot measure to elect the mayor through ranked choice voting. The first election using this voting method was in 2023. This potential ballot measure would be to amend the charter to use ranked choice voting for the at-large city council seats.

There are no cities in Colorado that use ranked choice voting (RCV) for at-large seats. In doing some initial research, we did find cities of similar size across the country that do use ranked choice voting for at-large seats:

- Bloomington, MN - Adopted in 2020 to elect the mayor district council seats, and at-large council seats. First used in November 2021.
- Cambridge, Massachusetts - Adopted in 1941. Uses proportional RCV to elect nine at-large city council seats and six at-large school board seats.
- Portland Maine - Adopted in 2010 for mayor and first used in 2011. Expanded in 2020 to apply to city council and school board seats. In 2022 voters approved a ballot measure authorizing the city council to adopt proportional RCV for multi-winner elections, with first implementation anticipated in November 2023.
- San Leandro, CA - Adopted as option in 2000 charter amendment and used since 2010 to elect mayor and city council (elected at-large, by numbered post).

This potential charter change would amend Article II (possibly charter section 5) to add ranked choice voting. As an example, Charter Section 14 is where ranked choice voting is described for election of the mayor: *“If three or more candidates run for the office of mayor, then the election shall be conducted by ranked choice (instant runoff) voting. The term of office for the mayor elected in 2023 shall be three years. Thereafter, the term of office for the mayor shall be for two years. The term of the mayor shall extend until a successor is duly chosen and qualified.”*

5. Increase petition signatures for mayoral and council candidates

This potential change would amend charter section 26, to increase the number of signatures required to be certified for the ballot for the position of mayor or council member. In 2023, voters approved a charter change to allow council candidates to obtain signatures outside the presence of the City Clerk. Prior to this change, council candidates had to have at least 25 people come in person to the Municipal Building to sign their petition for candidacy.

The potential change would be to increase the required number of signatures from 25 to 50-85. A quick review of surrounding communities that allow circulated petitions are:

- Westminster – 115k population - 25 signatures.

- Centennial – 107k population – 4 Districts – Mayor 100 signatures / council members 50 within district.
- Greeley – 107k population – 4 Wards – Mayor / council members 25 within ward.
- Longmont – 98k population – 3 Wards – Mayor (at-large) 50 signatures / council members 25 within Ward.

Charter Section 26 States: *“When a petition of nomination shall have been signed by not less than twenty-five and not more than thirty-five qualified and duly registered electors, and not later than the seventy-first day before the pending municipal election, the city clerk shall check such petition with the official registration list, determine its sufficiency, and, if sufficient, shall append the clerk's certification of petition, and file the completed petition in the clerk's office, together with the date and certificate of the filing thereof. The petition may be amended to correct or replace signatures which the clerk finds not in apparent conformity with the requirements of this charter and any applicable ordinance at any time prior to the sixty-sixth day before the election.”*

Other charter changes not recommended for the 2024 ballot:

The charter committee discussed other potential amendments and ballot measures brought forth by Council members but decided against recommending charter amendments:

- Eliminating meetings in July to extend the Council break (Sec. 9)
- Whether to increase the signature requirements for dedicated tax measures (Sec. 38a)
- Remove requirement for Public Works Director be an Engineer. (Sec. 66)
- Simplify language on publication of ordinances. (Sec. 18/18a)

Section 2. Financial Strategy Committee recommendations to City Council on potential tax measures.

At the March 6th Financial Strategy Committee meeting, Committee Members supported staff's recommendation to realign the responsibilities of reviewing potential tax ballot measures from the Charter Committee to the Financial Strategy Committee. This recommendation is supported by the Financial Strategy Committee (FSC) Charter responsibilities of oversight in financial planning, strategy, and fiscal stewardship for the City.

The five potential tax ballot measures proposed for consideration to the Charter Committee, and then to the FSC, included the following:

1. Residential Vacancy Tax
2. Commercial Vacancy Tax
3. Tax on Property Owners with 4+ Dwelling Units
4. Sales Tax Exemption on Food for Home Consumption, with revenue offset
5. Behavioral Health Tax

At the April 5, 2024 FSC meeting, staff shared preliminary research for the potential tax ballot measures, including intended use and outcomes of comparison cities and early revenue estimates and implementation and administration considerations. Due to the direct alignment with the Long-Term Financial Strategy and the additional staff research required, FSC recommended that the full City Council should identify which tax ballot measures should be proposed to be included in the Long-Term Financial Strategy and prioritized for future ballots. In addition, FSC supported staff's recommendation against bringing forward potential tax ballot measures in 2024.

A summary of the preliminary research for each potential tax ballot measure is provided below.

1. Residential Vacancy Tax and Commercial Vacancy Tax

A residential vacancy tax is a tax on residential property that is held vacant during a portion of the year. Residential and commercial vacancy taxes provide an incentive to reduce blight by improving, renting, or selling vacant property. A secondary intended outcome of residential vacancy taxes is to increase housing supply.

Based on preliminary staff research, vacancy taxes are typically structured as a flat fee or tax based on property type category or square footage, ranging from \$1,000 to \$7,000 per unit. Early estimates of vacant units in Boulder range between 1,000-4,000 units within the city limits. Revenue estimates for vacancy taxes in the City of Boulder would be dependent on vacancy type and classification as well as enforcement.

2. Tax on Property Owners with 4+ Dwelling Units

A tax on property owners with 4+ dwelling units within one or multiple residential properties intends to reduce or discourage investor-owned property and increase housing supply. Preliminary staff research did not yield examples of this specific type of tax. However, many jurisdictions tax owner and non-owner-occupied property classes, such as providing lower tax rates or tax credits for owner-occupied properties and taxing non-owner-occupied properties at a higher rate.

3. Sales Tax on Food for Home Consumption, with a Revenue Offset

Staff performed research on the sales tax exemption on food for home consumption, which includes sales tax on food items such as meats and vegetables, dairy products, and baked goods. The City of Boulder currently does not exempt sales tax on food for home consumption, however individuals are exempted from the City of Boulder sales tax on food for home consumption if their income is less than 200% of the federal poverty level and purchasing food through the Supplemental Nutrition Assistance Program (SNAP).

Based on other front range communities who have recently implemented a sales tax exemption on food for home consumption, staff estimates a loss of approximately \$12.7 million in city sales & use tax revenues if an exemption were applied. The table below provides an overview of taxation on food for home consumption of other cities and towns.

Table 1: Benchmarks – Tax on Food for Home Consumption

Tax on Food for Home Consumption (FFHC)	Count and Percentage	Cities and Towns
Count of Cities and Towns Reviewed	67 (100%)	Cities in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Larimer, and Weld
Count of Cities and Towns that tax FFHC	50 (75%)	Noteworthy close to Boulder: Broomfield, Erie, Lafayette, Longmont, Louisville, Lyons, Nederland, Superior, Ward
Count of Cities and Towns that exempt FFHC	17 (25%)	Noteworthy by size or proximity to Boulder: Aurora, Commerce City, Denver, Englewood, Frederick, Firestone, Greenwood Village, Lakewood, Littleton, Loveland

4. Behavioral Health Tax

A behavioral health tax, as proposed, would tax the sale of tobacco products, alcohol, and/or additional increment on marijuana to fund behavioral health services and programming. The below revenue estimates are based on 2022 projections.

Below are estimates of taxable sales and resulting revenue at different increments of tax. Staff chose the 0.15% increment as the lower bound because consumers are familiar with the 0.15% Food Service Tax assessed on food and beverage sales at eating establishments. Additionally, 0.5% and 1.0% were provided as options that are easy multipliers. None of those increments represent a staff recommendation but are provided to help Council envision orders of magnitude.

Table 2: Estimated Taxable Sales of Tobacco, Alcohol, and Marijuana

Category	2022 Estimated Taxable Sales
Tobacco	\$18,400,000
Liquor Stores	148,800,000
Alcohol @ Restaurants	73,300,000
Alcohol @ Grocery/Conv.	7,600,000
Recreational Marijuana	45,900,000
Medical Marijuana	5,080,000
Estimated Taxable Sales:	\$299,080,000

Table 3: Estimated Revenue Generated from Tax Increment Tobacco, Alcohol, and Marijuana Sales

Tax Increment	Additional Tax Revenue
0.15%	\$448,620
0.50%	\$1,495,400
1.00%	\$2,990,800

During the April 5th FSC meeting, FSC members raised several questions after receiving preliminary staff research on potential tax measures. Pending City Council review and approval, staff intend to review these questions along with others proposed as part of the Long-Term Financial Strategy. A summary of FSC member questions is synthesized below:

- What are the intended outcomes of these taxes for Boulder? What do we want to accomplish this tax? Who would benefit from the changes, and who would be impacted by these changes? Does that impact meet our intended outcomes?
- What is the budget we need to fulfill the goals we want to achieve as a city? What are the behaviors we are trying to incentivize and disincentivize?
- What would the cost of enforcement and administration be to implement vacancy taxes? How could enforcement or administration discourage multiple property owners within the same family unit?
- What is the rate of change for vacancies in Boulder? Would a tax generate sustainable, ongoing, or increasing revenues?
- How have other jurisdictions approached sin taxes in how it impacts underprivileged groups, and how would this align with our racial equity goals?

Section 3: Recommendations from the Boards & Commissions Committee to the full council on timing of implementation of changes from the boards and commissions assessment.

City Council received an update and provided feedback on the initial recommendations from the Boards and Commissions Assessment on November 9, 2023. Initial recommendations included a variety of changes that would help improve member experience, role clarity, recruitment, and representation. Council indicated interest in many of the recommendations, especially in areas that related to broadening participation on boards and commissions, including barriers to participation. In the months since, staff has met with Council's Subcommittee on Boards and Commissions (Council Members Folkerts and Winer) to review implementation strategies and timelines.

As shared in November, many aspects of boards and commissions, including term lengths, residency requirements, membership criteria, compensation, and meeting frequency, are set in City Charter Section 130. A handful of specific Boards and Commissions (e.g. Arts Commission, Parks and Recreation Advisory Board, Planning Board, etc.) are also set in

Charter. The initial timeline shared with subcommittee members focused on internal process improvement and building a new structure and program prior to pursuing necessary City Charter changes. However, staff acknowledged that making short-term progress on items related to board and commission term length, representation, and accessibility are severely limited until Charter language is changed by voters. The subcommittee encouraged staff to explore options for expediting some recommendations including potential ballot items for 2024 in support of this work.

Due to the amount of research to outline differing options for ballot inclusion, the subcommittee recommended full council consideration of interest in exploring options for editing board and commission related provisions of the Charter. If a majority of City Council is interested in exploring options for 2024 ballot consideration, staff will research and present Charter change options at an upcoming meeting with the goal of making boards and commissions more accessible, equitable, and transparent.

Section 4: Update on community sponsored city petitions that are circulating for signature.

The city has received and approved for circulation two initiative petitions for code changes related to decommissioning the Boulder Municipal Airport.

Petition #1: "Repurpose our Runways"

This petition is seeking to:

Shall the Boulder Municipal Airport be decommissioned (closed) as soon as reasonably feasible, with the exception that a portion of the site may be used for emergency-only helicopter facilities and uses, and with guidance regarding funding and management of the airport during the transition period including minimizing community impacts, and considering new uses for the site?

Text of Measure:

11-4-8 Decommissioning

(a) The city shall proactively work to decommission (close) the Boulder Municipal Airport as soon as reasonably feasible.

(b) As of the effective date of this ordinance, the city shall accept no more state or federal funding that comes with FAA grant obligations or any other obligations that would delay decommissioning of the airport. To the extent feasible, the city shall negotiate or litigate to end existing grant commitments to the FAA as soon as possible, and thereby regain local control of the site and its uses.

(c) In the interim period before airport decommissioning:

(1) No expansion or improvement of BDU airport facilities or property shall

be allowed except to maintain public safety for remaining operations and to provide unleaded aviation fuel.

(2) The city shall prioritize and implement measures to minimize negative impacts from aviation activities such as exposure of people and wildlife to noise and lead pollution.

(3) The city shall work with current airport users and tenants on a transition to airport closure.

(4) The City shall consider new uses for the property that prioritize affordable housing, neighborhood-serving businesses, parks, and greenways. Consideration should be given to innovations in climate resilience, creative housing types and building designs, child- and family-friendly features, and minimization of car dependency.

(d) Exceptions: Once decommissioned, no aviation uses or facilities shall be permitted at this site with the exception that a portion of the site may be used for emergency-only rotor aircraft (helicopters) and associated facilities. Such emergency uses may include, but are not limited to, fire, flood, and medical emergencies.

Petition #2: "Runways to Neighborhoods"

This petition is seeking to:

If ballot measure "Repurpose Our Runways" passes, shall the decommissioned airport site be repurposed as sustainable, mixed-use neighborhoods, with at least 50% of on-site housing units designated as permanently affordable for low, moderate, and middle-income residents, and whose development shall be guided with input from a community board?

Text of Measure:

If "Repurpose Our Runways" passes, then the following shall be added to the Boulder Revised Code:

11-4-8

(e) New uses for the decommissioned airport property shall predominantly consist of sustainable, well-connected, mixed-use neighborhoods designed to help address Boulder's affordable housing crisis. Planning for the new neighborhoods shall implement the new uses and factors described for consideration in 11-4-8(c)(4). Furthermore, the city shall:

(1) incorporate attractive mixed-income housing designed to meet the needs of families and essential workers. At least 50% of on-site housing units shall be permanently affordable units in Boulder's affordable housing program. These homes

shall be for low-, moderate-, and middle-income residents, with a focus on middle-income; and

(2) establish a community board to provide guidance on an area plan for the airport site as well as criteria for development proposals. The city shall include the community board in the process of evaluating development proposals for the airport site.

Letters of “intent to circulate” and petition drafts were submitted to the City Clerk on March 21, 2024. The City Clerk provided her comment letter and approval of the first submission of the petitions to the committee on April 1, 2024. The committee has elected to utilize both paper and electronic endorsements through the Boulder Direct Democracy Online system for both petitions.

Each petition will need 3,401 signatures to be deemed “sufficient”. Petitions must be submitted to the City Clerk for review and certification no later than May 29, 2024.

Section 5: Potential 2024 ballot measures for the state and region

Boulder County

Boulder County has not made any decisions yet regarding potential 2024 ballot measures. The county is polling on referring various measures to the ballot including tax increases for behavioral health, subdivision paving and repurposing of the Worthy Cause sales tax. Boulder County voters last approved a 15-year extension of the 0.05% Worthy Cause sales tax in 2017. The 15-year initiative allocates a portion of the sales tax revenue to county non-profit human service agencies for capital projects, including the purchase of land or buildings, construction, renovation, or debt reduction. The county is also polling on some general policy questions.

Boulder Valley School District (BVSD)

Boulder Valley School District currently does not have plans for any ballot measures.

State of Colorado

Currently, there are two initiatives that relate to property taxes or property tax revenue that have had titles set for the 2024 statewide ballot, one which will be on the ballot and one that is circulating for signatures.

- Initiative #50 will be on the 2024 ballot. This initiative is a change to the Colorado Constitution, requiring 55% of the vote to pass. Per the initiative, each year property tax revenue is projected to increase by more than 4%. a taxing jurisdiction would be required to put a question on the ballot asking voter approval to retain the revenue above the 4%. The wording of the ballot title is prescribed by the initiative.
- Initiative #108 is currently circulating for signatures. This initiative would reduce the assessment rate to 24% for all real property except residential, producing mines and lands or leaseholds producing oil or gas (for 2023 taxes payable in 2024 assessment rates range from 26.4-27.9%) and setting the residential assessment rate at 5.7% (for

2023 taxes payable in 2024 assessment rate is 6.7%) effective tax years beginning 1/1/2025. The measure provides a backfill from the state General Fund to local governments for lost revenue.

The deadline to collect sufficient signatures is August 5, 2024. It is very early in the process so it is unclear which initiatives may ultimately appear on the November 2024 ballot. The Colorado Secretary of State maintains a [website](#) with the current status of initiatives.

In addition, the Colorado Commission on Property Tax released preliminary report on 3/15/24, with the final report due 12/31/24. The Commission recommends conducting fiscal analysis involving 10 different proposals for property tax, however they did not provide a specific recommendation for any of the proposed property tax changes. Of the 10 proposals, the highest potential impacts to the City of Boulder stem from the following:

- Homestead Value Reduction
- Extend SB22-238 and SB23B-001 to apply in 2024, evaluate extending to 2025
- Adjustable cap on property tax growth at taxing jurisdiction level, can be overridden
- Separate school and government local tax assessments

NEXT STEPS

- June 20, 2024 follow up discussion with council (if needed)
- July 18, 2024, first reading of ballot measures
- August 1, 2024, second reading and public hearing on ballot measures (potential final adoption)
- August 15, 2024 continued second reading/third reading and public hearing on ballot measures (potential final adoption) and, council's approval of the ballot order

ATTACHMENTS

- A. Fort Collins May 2022 Summary memo on council pay options
- B. Fort Collins November 2022 ballot measure for council compensation