



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: June 20, 2024

AGENDA TITLE

Follow-up discussion with council on Ballot Measures and consideration of a motion to direct the city attorney to draft for first reading amendments to Charter Sections 7, 9, 130 and a new Charter section 21A, as decided on by council, to be submitted to the registered electors of the city of Boulder at the General Municipal Coordinated Election to be held on Tuesday, November 5, 2024

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Erin Poe, Deputy City Attorney
Mark Woulf, Assistant City Manager
Pam Davis, Assistant City Manager
Elesha Johnson, City Clerk

EXECUTIVE SUMMARY

At the study session on May 9, 2024, the council requested that staff present draft changes to the city's Charter regarding Sec. 7 - Compensation, Sec. 9 - Meetings of council, Sec. 130 - General provisions concerning advisory commissions, and a new Charter section, Sec. 21A - Executive Sessions, as recommended by the Charter Review Committee and the Board and Commission Committee. Staff have drafted potential changes for council review as shown in **Attachment A**, Council Compensation Charter Changes, **Attachment B**, Executive Sessions Charter Changes, and **Attachment C**, Advisory Commissions Charter Changes. If council decides to move forward with these Charter changes, the next step will be first readings of ballot item ordinances.

In summary, the draft changes include:

1. Sec. 7 - increase council compensation from a stipend per meeting to an amount based on Area Median Income to reflect the increased quantity and complexity of council work.
2. Sec. 9 - authorize council to meet in executive sessions under the circumstances allowed by Colorado public meeting laws.
3. Sec. 130 - authorize council to set the terms, eligibility, and meetings schedule of Charter Sec. 130, advisory commissions differently than the default terms set forth in Sec. 130. The City Council would be able to authorize by ordinance the terms and eligibility criteria for members as is currently done for duties by ordinance.

STAFF RECOMMENDATION

Suggested Motion Language:

If council would like to move forward any of the three draft Charter changes, staff suggests the following motion:

Motion to direct the city attorney to draft for first reading amendments to Charter Sections 7, 9, 130 and a new Charter section 21A, as decided on by council, to be submitted to the registered electors of the city of Boulder at the General Municipal Coordinated Election to be held on Tuesday, November 5, 2024

ANALYSIS

Charter amendments are governed by state law. A home rule charter amendment may be initiated by the adoption of an ordinance by the governing body submitting the proposed amendment to a vote of the registered electors of the municipality. C.R.S. § 31-2-210. Once the City Council has determined which changes to the city's Charter it supports, the next step will be to pass by ordinance a ballot title for each of the proposed amendments. First reading for ballot items is proposed for July 18, 2024, with second reading and public hearing proposed for August 1, 2024. The ordinances will set the ballot language in the form of "yes/no" questions for voters to consider at the general election to be held on Tuesday, November 5, 2024.

1. Council Compensation.

City Council members receive \$244.14 per meeting for 52 meetings per calendar year (\$12,695.28 for 2024). This is calculated from the \$100 per meeting stipend set by Charter Sec. 7 which provides an annual escalation in a percentage equivalent to any increase over the past year in 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. The amendment shown in **Attachment A** would base council compensation on the Area Median Income (AMI) for the area including Boulder. A similar council compensation provision was adopted by voters in Fort Collins in 2022. In Fort Collins, the mayor receives 75%, the mayor pro tem 60%, and other council members 50%. For the City of Boulder, in 2024 this equates to \$76,650 for the mayor, \$61,320 for the mayor pro tem, and \$51,100 for other council members.

The draft language in **Attachment A** includes a provision to calculate the AMI annually instead of the current practice of adjusting annually based on the increase of the Consumer Price Index.

2. Executive Sessions.

Executive sessions are allowed by C.R.S. § 24-6-402(4) open meeting law so that local public bodies may have non-public discussions of designated subjects. The statutory exceptions are drafted close to verbatim in **Attachment B** so that the council would have the same authority as allowed by state law. Another benefit of mirroring the language of state law would be that case law interpreting those provisions could be used when analyzing whether a circumstance meets the requirements for an executive session.

In summary, the allowed situations for an executive session under state law are:

- A. The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest.
- B. Conferences with an attorney for the purposes of receiving legal advice on specific legal questions.
- C. Matters required to be kept confidential by federal or state law or rules and regulations.
- D. Specialized details of security arrangements or investigations, including defenses against terrorism.
- E. Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.
- F. Personnel matters.
- G. Consideration of any documents protected by the mandatory nondisclosure provisions of the “Colorado Open Records Act”.
- H. In addition to interviewing finalists in a public forum, the council may interview finalists in executive session.

In addition to the above subjects, **Attachment B** includes a ninth subject to encompass situations which would allow executive sessions if state law is amended to include new subjects. As shown in **Attachment B**, the draft changes would amend Sec. 9 of the city’s Charter and refer to a new Charter section, Sec. 21.A. - “Executive Sessions”.

3. Advisory Commissions.

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.

Many aspects of boards and commissions, including term lengths, residency requirements, membership criteria, compensation, and meeting frequency, are set in City Charter Section 130. Due to the limitations of addressing these barriers to participation without amending Charter, staff and Council's Subcommittee on Boards and Commissions brought forward a recommendation to pursue an option that would provide council more flexibility in developing a new board and commission program.

Council provided feedback at the May 9, 2024, study session to limit any proposed changes such that they do not have an undue impact on the capacity of staff to bring forward the previous items (council pay and executive session changes) and the focus is on Charter Section 130 without impacting the scope of authority of boards and commissions and other Charter defined boards and commissions.

The draft changes to Charter Sec. 130 allow for greater flexibility in the compositions and operations of Sec. 130, advisory commissions. On its own, the drafted Charter changes shown in **Attachment C** would not change any board or commission. In order to implement change, the council would also need to adopt an ordinance with the changes desired for a specific board or commission. Currently, Sec. 130 sets forth the terms and eligibility for most boards and commissions as follows:

- five or seven members,
- terms of five years,
- members not all of one gender identity,
- members who are well known for their ability, probity, public spirit, and particular fitness to serve on such respective commissions,
- at least eighteen years old,
- resided in the city of Boulder for at least one year immediately prior to their appointment, and
- shall hold monthly meetings.

The draft language shown in **Attachment C**, keeps the current requirements found in Sec. 130 as a default for current Sec. 130 boards and to new boards unless council makes changes by ordinance.

If Sec. 130 is amended to allow for greater flexibility the council could impact most boards by amending enabling ordinances. The structure would be similar to how BOZA is established in Charter Sec. 84A. That section states, "The membership, terms of office, method of appointment and all other matters relating to the board of zoning adjustment

shall be as the city council shall by ordinance provide.” This is the system that Fort Collins uses, which is the basis for the proposed changes.

However, there are some boards that have terms and member levels set by different Charter sections and those separate Charter sections would not change unless ballot items were brought forward separately. Boards with individual Charter sections are:

- Arts Commission (Sec. 135): seven members, (Sec. 136), five-year term implied
- Parks and Recreation Advisory Board (Sec. 157): seven members, five-year terms (Sec. 158)
- Open Space Board of Trustees (Sec. 173): five members (Sec. 172), five-year terms
- Planning Board (Sec. 74): seven members, five-year terms (Sec. 75)

Also shown in **Attachment C** is draft changes to the removal language found in Sec. 130. Charter Sec. 130 currently includes the provisions that, “The council shall have the power to remove any commissioner for non-attendance to duties or for cause.”

Attachment C has the following language regarding removal:

All board and commission members serve at the pleasure of council. The council may remove members for nonattendance to duties, conduct unbecoming a member, and any other reason not prohibited by law.

The intent of this language is to allow council to have broad removal authority while attempting to ensure that a future council would not discriminate on attendees for characteristics such as race or religion. The proposed language is more consistent with the removal language in B.R.C. Section 2-3-1 which states that council, “May remove any member by majority vote for conflict of interest violation, any other violation of applicable law, regulation, or policy, nonattendance to duty, failure to attend three consecutive regularly scheduled meetings without a leave of absence approved by a majority of the board or commission, or any other cause; and...”

Staff and Subcommittee supported work to design a revised boards and commissions program and prepare related code changes will happen in parallel with the proposed Charter changes. This work includes internal process improvements, role clarification and best practices, and recommendations to inform potential future code amendments for Charter Sec. 130 advisory commissions related to terms, eligibility, and other matters. Council will receive updates on the progress of this work throughout the remainder of the year.

NEXT STEPS

City Council may decline to move any city Charter change forward on June 20, 2024, at first or second reading. Staff will take direction from council on June 20 and make

changes as needed to the draft Charter changes. The proposed schedule is as follows for any matters the council decides to move forward:

- First reading is scheduled for July 18, 2024.
- Second reading and public hearing is scheduled for August 15, 2024.

ATTACHMENTS (*new language is in red, deleted language in strikethrough*)

A – Council Compensation Charter Changes

B – Executive Sessions Charter Changes

C – Advisory Commissions Charter Changes

ATTACHMENT A
Council Compensation

Sec. 7. - Compensation.

~~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 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.~~

REPLACEMENT LANGUAGE:

For the purpose of this section, Area Median Income means the Area Median Income reported annually for a single person household by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Boulder, Colorado.

- (a) Commencing in 2026, compensation for members of the City shall be as follows:
 - (1) For the Mayor: seventy-five percent of Area Median Income.
 - (2) For the Mayor Pro Tem: sixty percent of Area Median Income.
 - (3) For all other council members: fifty percent of Area Median Income.
- (b) Council compensation shall be adjusted annually beginning January 1 based on the AMI calculation for the previous year and averaged over the calendar year. Compensation shall be paid on the same schedule as city employees, or such other schedule as determined by the City Manager.
- (c) Although members of the City Council are generally not considered city employees, Council members 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.

ATTACHMENT B

Executive session charter change

Sec. 9. - Meetings of council.

At 5:00 p.m. on the day of the first business meeting of the council in December following each general municipal election, the council shall meet at the usual place of holding meetings, at which time the newly elected council members shall take office. Thereafter the council shall meet at such times as may be prescribed by ordinance or resolution and shall meet in regular session at least once in each calendar month. The mayor, acting mayor, or any five council members may call special meetings upon at least twelve hours' written notice to each council member, served personally on each, or left at each member's place of residence.

Except as provided in Charter Sec. 21A., All meetings of the council or committees thereof shall be public.

The council shall have the authority to appoint council committees. Such committees shall generally consist of no more than two council members and in no event shall be equal or greater than a quorum of council. Other council members may attend any council committee meeting to observe but shall not participate.

The council shall appoint a committee of not more than two council members and any number of non-council members to screen applications for city manager, city attorney, and municipal court judge, to evaluate the performance of the persons occupying such positions, and to consider recommending disciplinary actions relating to such persons. Such committee may conduct its business in private, ~~provided that the council as a whole takes action to determine finalists at a public meeting, to determine compensation at a public meeting, and to take disciplinary action at a public meeting.~~

NEW SECTION

Sec. 21A. - Executive Sessions.

- (a) The City Council, and any committee of the City Council, may, by two-thirds majority vote of those members present and voting, hold an executive session upon announcement of the topic for discussion in the executive session, which announcement shall include a specific citation to the provision of this section that authorizes the City Council or council committee to meet in executive session, and shall identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is to be held. Said executive session may be held only at a regular or special meeting and only for the purposes of considering any of the following matters and providing direction, through individual expressions of opinion, to city staff or other persons with regard to such matters:
- (1) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale;

ATTACHMENT B

Executive session charter change

- (2) Conferences with an attorney for the purposes of receiving legal advice on specific legal questions;
 - (3) Matters required to be kept confidential by federal or state law or rules and regulations. The specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session shall be announced;
 - (4) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;
 - (5) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators;
 - (6) Personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. This shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees;
 - (7) Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act," part 2 of article 72; except that all consideration of documents or records that are work product as defined in § 24-72-202(6.5) or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to § 24-6-402(4);
 - (8) In addition to interviewing finalists in a public forum, interview finalists in executive session. The council may instruct personnel and representatives to begin contract negotiations with one or more candidates in executive session, including the necessary process to prioritize, for the purposes of negotiation, one or more finalists after required public forums have been completed; and
 - (9) Any other discussion allowed by C.R.S. § 24-6-402, as amended, to be held in executive session.
- (b) No final legislative action shall be taken by the city in executive session. Such final legislative action may be taken only in an open meeting.

ATTACHMENT B

Executive session charter change

- (c) Executive sessions shall be closed to the general public, but the City Council may permit any person or group to attend such sessions. Council members not present and voting for a regular or special council meeting may nonetheless participate in an executive session that is part of that meeting using remote technology.

ATTACHMENT C
Advisory Commissions

Sec. 130. - General provisions concerning advisory commissions.

~~The council by ordinance may create and provide for such advisory commissions as it may deem advisable.~~

- (a) The council may, by ordinance, establish appointive boards and commissions. The ordinance establishing such boards and commissions shall:
- (1) prescribe the powers, duties, and operating procedures of the board and commission;
 - (2) establish the terms of office of the board or commission members, including initial overlapping terms, if needed;
 - (3) establish the eligibility criteria of board and commission members; and
 - (4) state whether the board or commission shall have alternate members authorized to vote when serving in the absence of regular members.
- (b) ~~In the absence of an ordinance specifying the terms set forth in subsection (a) above, each board and commission~~ Except as otherwise specified in this charter, each of the existing advisory commissions, shall be composed of five city residents. ~~For any advisory commissions appointed after January 1, 2019, the council shall specify in the ordinance forming the advisory commission whether the commission shall have five or seven members, for any advisory commission created by ordinance adopted in March 2018, the council may, by subsequent ordinance, specify that the commission shall have seven members. All members of a commission shall be appointed by the council, not all of one gender identity, who are well known for their ability, probity, public spirit, and particular fitness to serve on such respective commissions and who are at least eighteen years old and who have resided in the city of Boulder for at least one year immediately prior to their appointment to serve on the commission. All commissions shall hold regular monthly meetings. When first constituted, the council shall designate the terms for which each member is appointed so that the term of one commissioner shall expire on December 31 of each year; and thereafter the council shall by March of each year appoint one member to serve for a term of five years. The council shall have the power to remove any commissioner for non-attendance to duties or for cause. All vacancies shall be filled by the council. When first appointed and annually thereafter following the council's appointment of the commissioner, each commission shall organize by appointing a chair, a vice chair, and a secretary; all commissioners shall serve without compensation, but the secretary of any commission, if not a member, may receive a salary to be fixed by the council; any commission shall have power to make rules for the conduct of its business.~~
- (c) All board or commission members shall serve until their successors are appointed.
- (d) All board and commission members serve at the pleasure of council. The council may remove members for nonattendance to duties, conduct unbecoming a member, and any other reason not prohibited by law. Any vacancy during the unexpired term of any member shall be filled by the council for the remainder of the term. Each board and commission shall choose its own officers from among its members. The council may change any or all of the powers, duties and procedures of any board or commission not set by this Charter and may abolish any board or commission which is not required by this Charter or law.

ATTACHMENT C
Advisory Commissions

~~Special meetings may be called at any time upon due notice by a majority of the members. A majority of the members shall constitute a quorum, and the affirmative vote of at least a majority of the members shall be necessary to authorize any action by the commission.~~

~~All commissions shall keep accounts and records of their respective transactions, and at the end of each quarter or more often, if requested by the council, and at the end of each fiscal year shall furnish to the council a detailed report of receipts and expenditures and a statement of other business transacted.~~

~~The chair of a commission shall preside at the meetings thereof and sign, execute, acknowledge, and deliver for the commission all contracts and writings of every kind required or authorized to be signed or delivered by the commission. The signature of the chair shall be attested by the secretary.~~

~~The commissions shall have the right to the floor of the council to speak on plans and expenditures proposed or to appeal for a decision in a failure to agree with another commission or the manager.~~

~~Wherever there shall be suitable accommodations in the city building, the offices of the commissions shall be maintained there.~~