

**ASHLAND CITY COUNCIL
BUSINESS MEETING DRAFT MINUTES
Tuesday, February 7, 2023
Council Chambers, 1175 E. Main Street**

**View on Channel 9 or Channels 180 and 181 (Charter Communications) or live stream via
rvtv.sou.edu select RVTV Prime.**

HELD HYBRID (Limited In-Person Social Distancing Seating and Zoom Meeting Access)

For written public testimony, email public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony.

For public oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return to the City Recorder.

5:30 PM Executive Session

The Ashland City Council will hold an Executive Session for the following:

1. To conduct deliberations with persons the City of Ashland has designated to negotiate real property transactions pursuant to ORS 192.660(2)(e)

6:00 PM Regular Business Meeting*

I. CALL TO ORDER

1. Land Acknowledgement**

Councilor Kaplan read the Land Acknowledgment into the record.

II. PLEDGE OF ALLEGIANCE

Councilor Hansen led the Pledge of Allegiance.

III. ROLL CALL

Councilors' Hyatt, Graham, DuQuenne, Hansen and Kaplan were present.

IV. MAYOR'S/CHAIR OF THE COUNCIL ANNOUNCEMENTS

V. APPROVAL OF MINUTES ***

VI. SPECIAL PRESENTATIONS

1. City Council Orientation / Training (estimate approx. 45 minutes)

VII. CITY MANAGER REPORT

VIII. PUBLIC FORUM (15 minutes)

IX. CONSENT AGENDA

1. Antisemitism Proclamation
2. Standing Advisory Committee Appointments

- X. **PUBLIC HEARINGS**
- XI. **UNFINISHED BUSINESS**
 - 1. 165 Water Street Appeal Findings Adoption
 - 2. City Council Election or Process to fill Mayor Vacancy
- XII. **NEW BUSINESS**
 - 1. Community Renewable Energy Planning Grant Application
 - 2. Special Called Election for May 16, 2023
 - a. Food and Beverage Tax ordinance Amendment Ballot Measure Language
 - b. City Council Compensation Ballot Measure Language
 - c. Resolution 2023-01 Referring Ballot Measure Language to City Election Officer
- XIII. **ORDINANCES, RESOLUTIONS AND CONTRACTS**
 - 1. Sprint Telecommunication Franchise Renewal
- XIV. **OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS**
- XV. **ADJOURNMENT OF BUSINESS MEETING**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Manager's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).

* Items on the Agenda not considered due to time constraints are automatically continued to the next regularly scheduled Council meeting [AMC 2.04.030.(D)(3)]

**** LAND ACKNOWLEDGEMENT**

We acknowledge and honor the aboriginal people on whose ancestral homelands we work—the Ikirakutsum Band of the Shasta Nation, as well as the diverse and vibrant Native communities who make their home here today. We honor the first stewards in the Rogue Valley and the lands we love and depend on: Tribes with ancestral lands in and surrounding the geography of the Ashland Watershed include the original past, present and future indigenous inhabitants of the Shasta, Takelma, and Athabaskan people. We also recognize and acknowledge the Shasta village of K'wakhakha - "Where the Crow Lights" - that is now the Ashland City Plaza.

***Agendas and minutes for City of Ashland's Boards and Commissions meetings may be found at the City's website, <https://www.ashland.or.us/Agendas.asp> . Use the View By box to select the Board or Commission information you are seeking.



Presentation to City of Ashland City Council

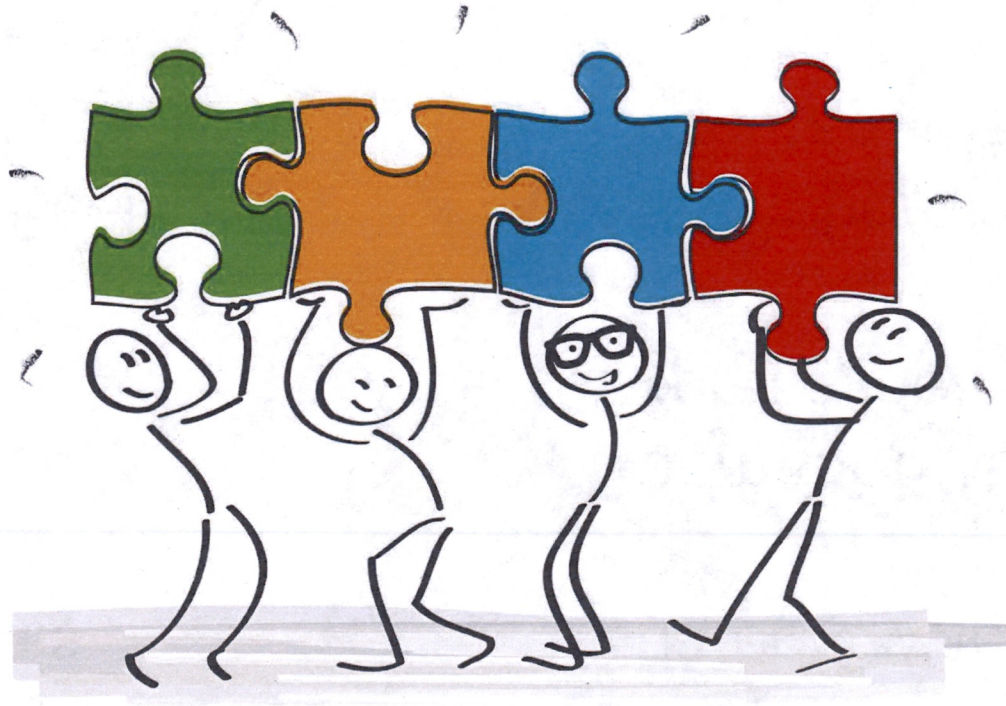
By Acting City Attorney Douglas M. McGeary
& CIS Deputy General Counsel Tamara E. Russell
February 7, 2023



- The Eight Habits of Highly Effective Councils
- Legal Issues re City Councilors' "Scope of Duties"
- Social Media: Potential Legal Pitfalls
- Q&A (a.k.a., "Let's play *Stump the City Attorney and CIS Lawyer!*")



Eight Habits of Highly Effective Councils (a.k.a., “teams”)



But first . . . Principles of a Team

- Shared Goals
 - Everyone
Contributes
 - No Person Feels
Threatened by Conflict
 - Participative Decision-
Making
- Shared Ownership
 - Room for Everyone to
Express Ideas & Opinions
 - Atmosphere of Trust and
Encouragement



Habit #1

Think and act strategically

Habit #2: Understand & Demonstrate Teamwork

The Three Hallmarks of an Effective Small Group:

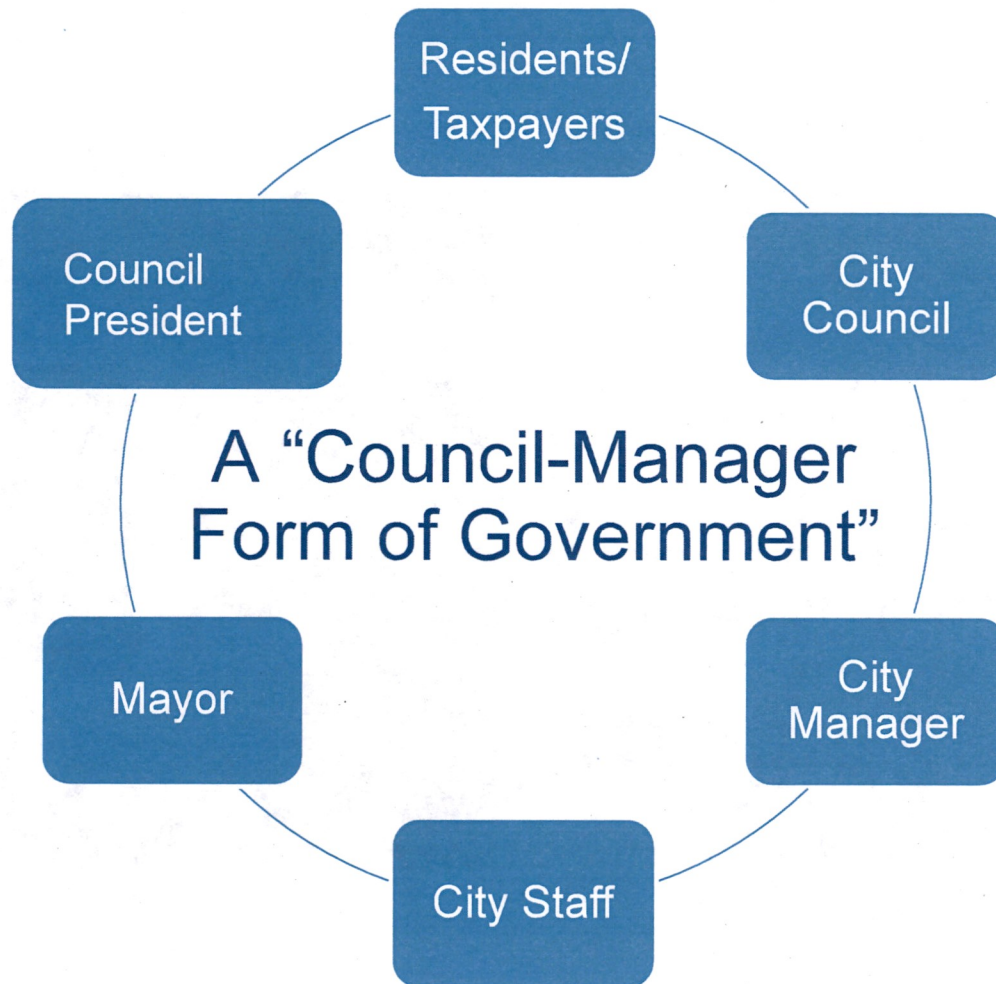
1. **Interpersonal Skills**
Ability to Work With Others
2. **Task Skills**
Knowledge to do a Job
3. **Rational Skills**
Ability to Deal with Issues and Problems Rationally



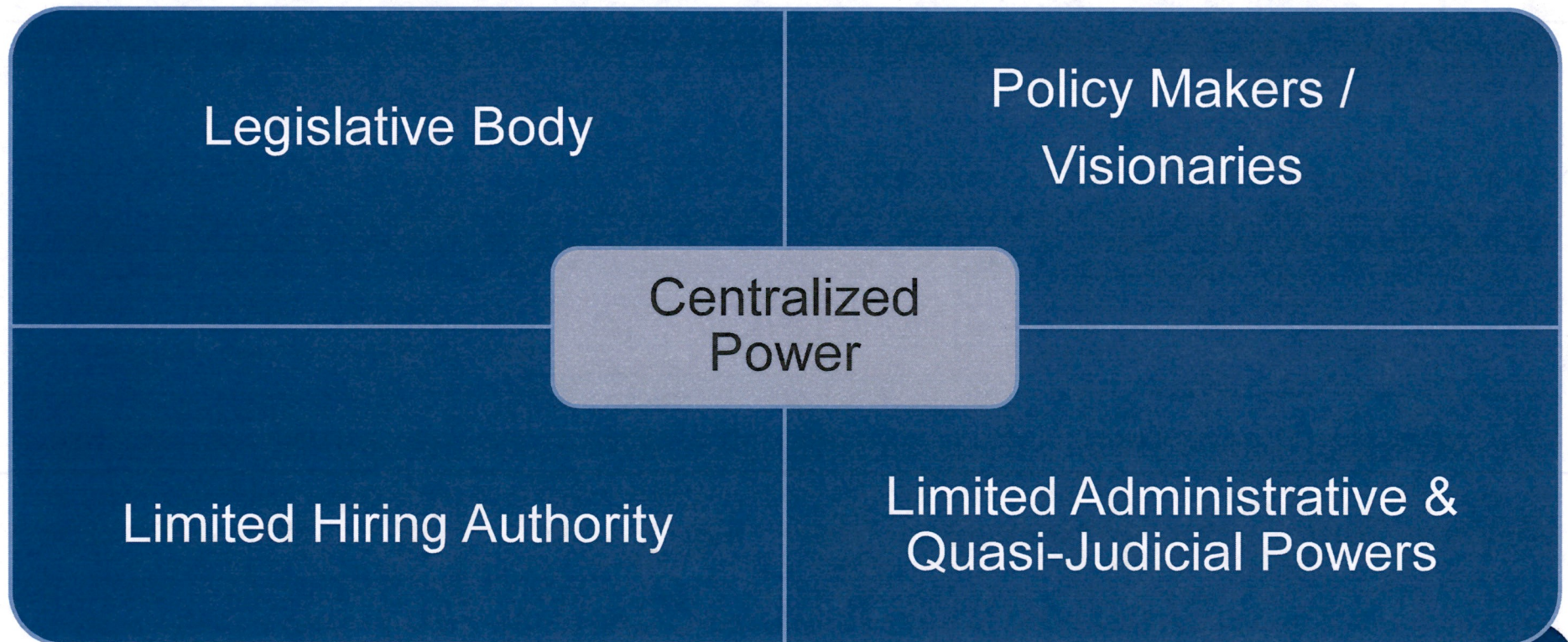


Habit #3

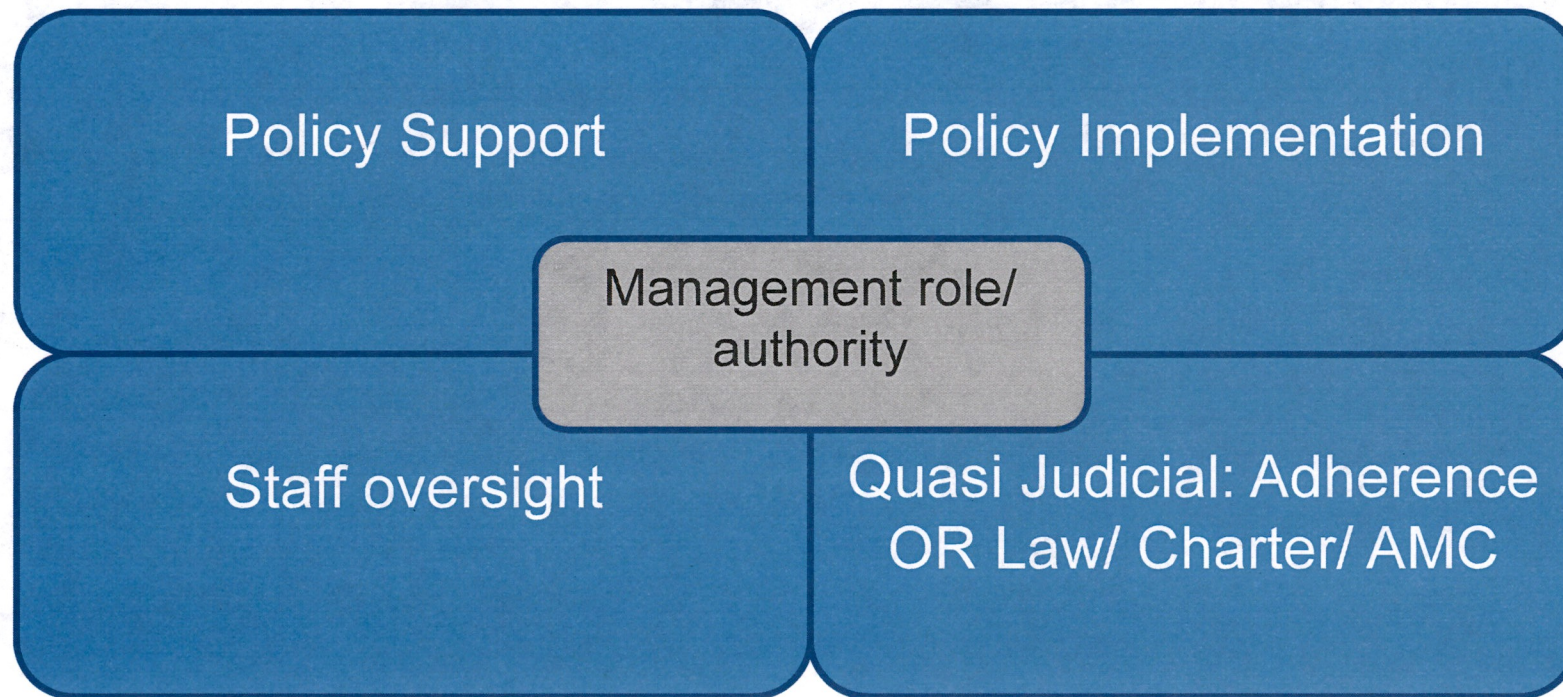
Define Roles and Responsibilities



City Councils - Generally



City Management- Generally

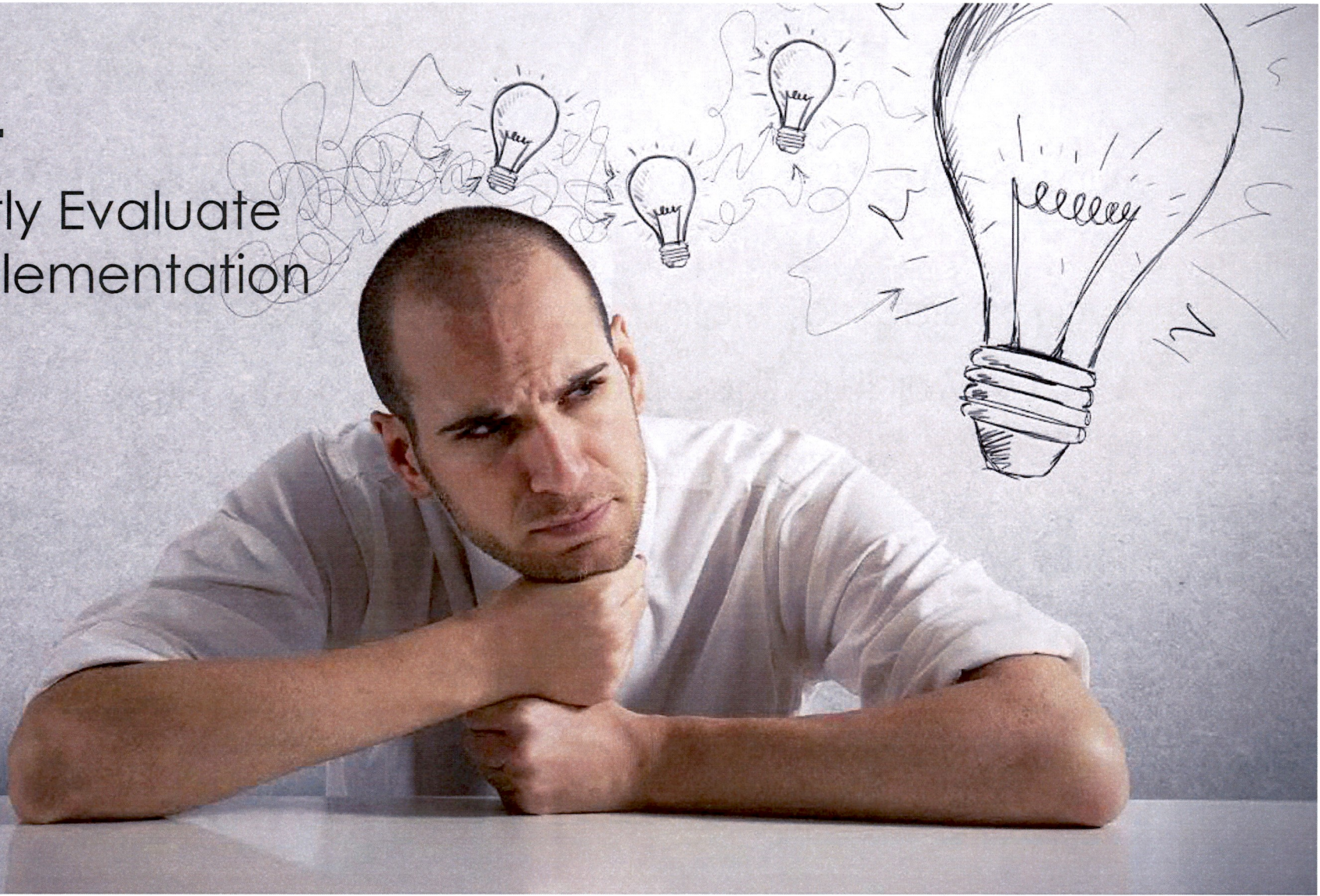


What “rules” apply to a City Council?

- Authority given by Charter, Ordinance & Resolution
- Authority does not rest with any single elected official but with the majority of the body
- City business is not an elected official's business
- City employees are not elected official's employees
- Elected officials can be held responsible for their actions toward city employees and third parties
- Statements made to the city attorney are not necessarily confidential

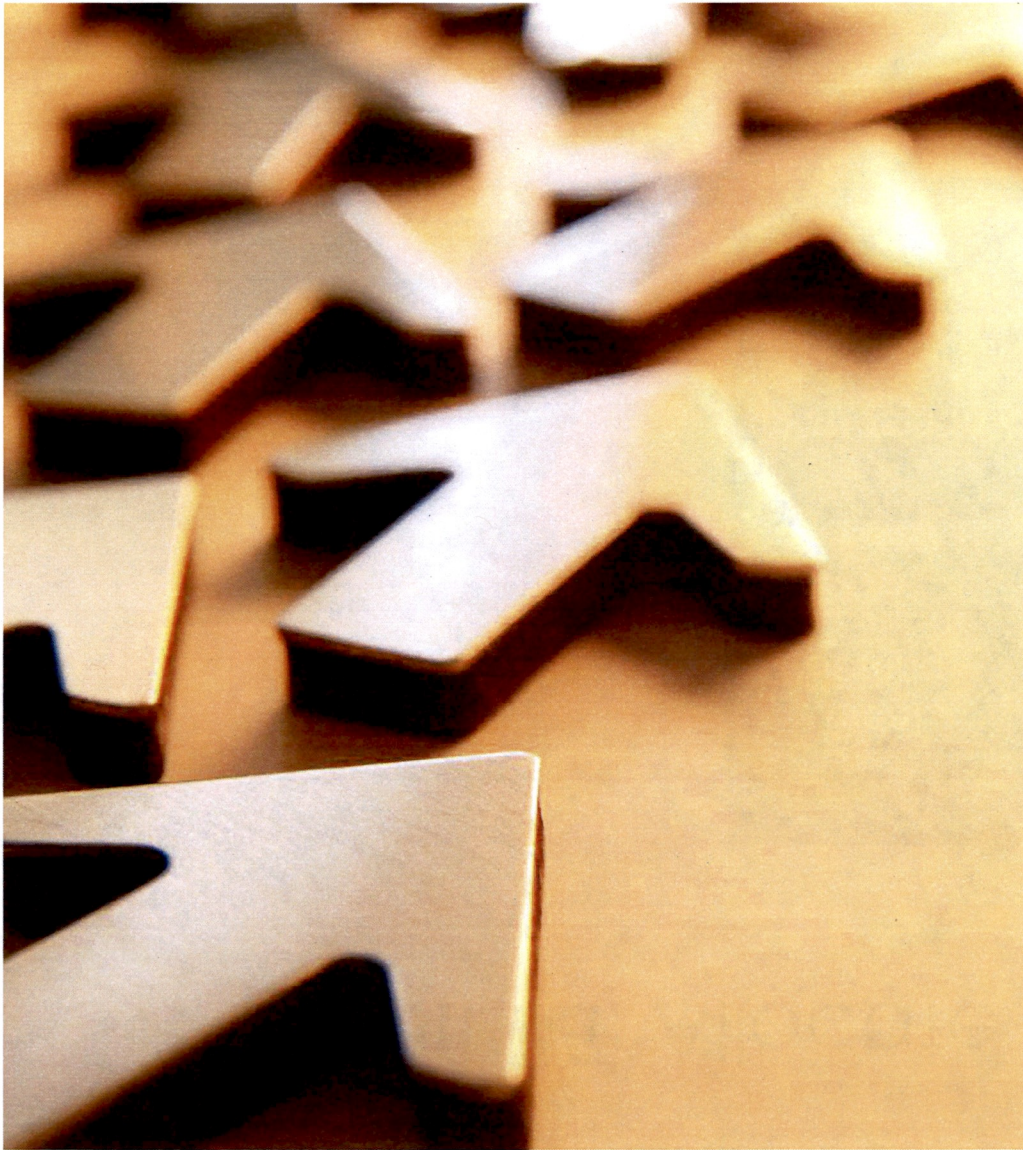
Habit #4

Consistently Evaluate
Policy Implementation



Habit #5: Allocate Time Appropriately





Habit #6

Follow the Council's
Rules of Procedures

AMC 2.04 and City of
Ashland Resolution 2020-03

Habit #7

Seek Objective
Assessments



Habit #8

Never Stop Growing or Learning
(continuing education)

Example: LOC's Elected Essentials Training (January 26 – Keizer)



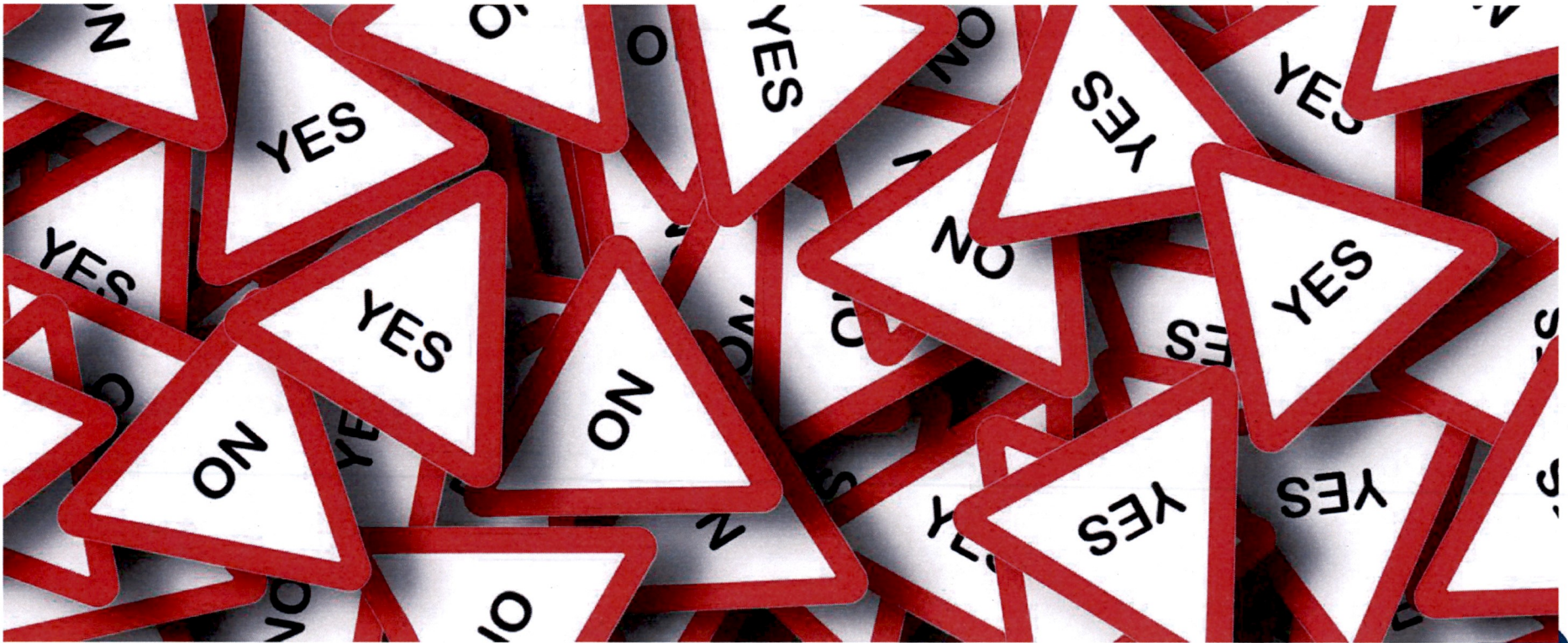
Seven Ways to Improve Communication During a Conflict

Focus on behaviors and not your interpretations	Avoid the use of “always” and “never”
Use “I” statements	Say what you want and not what you don’t want
Beware of non-verbal messages	Apologize for your contribution
Give others a chance to speak	

Debate vs. Dialogue

Debate	Dialogue
Assumes there is one right answer (and you have it)	Assumes others have pieces of information that, when joined, crafts a solution (together)
Style is combative, attempting to prove the other side “wrong”	Style is collaborative, seeks to find common understanding
Listens to find flaws and counter argue	Listens to understand
Critiques only the other position	Critiques all views, including your own
Defends your own views at all costs	Allows others’ thinking to improve yours
Encourages searches for differences	Encourages search for basic agreement
Creates a winner/loser & discourages further conversation	Creates an open end, leaving the idea open for further discussion
Involves no focus on feelings, often actively seeking to belittle or offend	Involves a real concerns for the other, doesn’t actively seek to alienate or offend

Legal Issues re City Councilors' "Scope of Duties"



Claims Against Public Officials

“[E]very public body is subject to civil action for its torts and those of its officers, employees and agents **acting within the scope of their employment or duties**, . . . arising out of a governmental or proprietary function” (ORS 30.265)

What isn't Included?

- Malfeasance in office;
- Willful or wanton neglect of duty;
- Actions outside the scope of duties/employment

Social Media:

Potential Legal Pitfalls



Photo by Jeremy Bezanger on Unsplash



Public Records & Social Media

Oregon's Public Records law applies to cities in two ways:

- Retention; and
- Requests

Public Records & Social Media

What social media content needs to be retained?

- At a minimum, any records covered by the general retention schedule under OAR, Ch. 166, Div. 200.
- These regulations do not specify a retention schedule for social media posts. BUT they do specify rules for “communications and distributions” and “complaints” received by the City.

Public Records & Social Media

What social media content can be requested by the public?

- Any content that pertains to “the conduct of the public’s business”
- This would include any content on a City-operated account because it is a product of City resources.
 - Ex. 1: Social media content that is no longer retained, but still recoverable on the web site.
 - Ex. 2: Direct messages or posts made on other user’s pages.

Types of Accounts

For cities, there are two types of social media accounts.

1. City-operated accounts

- A city's main FB page, a police department's Twitter account, etc.

2. Private accounts

- The accounts belonging to city staff and elected officials.
- To what extent are these private accounts subject to regulation? Answer: Depends on how they are used!

“Private” Accounts

Campbell v. Reisch, 986 F3d 822 (8th Cir 2021)

(Lawmaker’s Twitter account was found to be a “private” account – lawmaker protected from liability for a First Amendment violation)

“Private” Accounts

Davison v. Randall, 912 F3d 666 (4th Cir 2019)

(County commissioner violated the First Amendment rights of a County resident by banning the resident from her Facebook page.)

“Private” Accounts: State of OR Interpretation

Social media posts are considered public records if:

- Posts are made on an official public agency account or on a private account that is being used to distribute information for that agency to the public
- If a private account is used to conduct government business[,] then it becomes public and is subject to the Oregon Public Records Law. . . .”

- Oregon State Archives, Record Management Section

Key Takeaways

Have Two Social Media Accounts:

An “official” City Councilor social media page that you oversee and post to. Use this to inform the public about the City’s business.

A “personal” social media page. Use this to post stories and pictures about your family and dog, write restaurant reviews, and to address non-City issues.

Key Takeaways

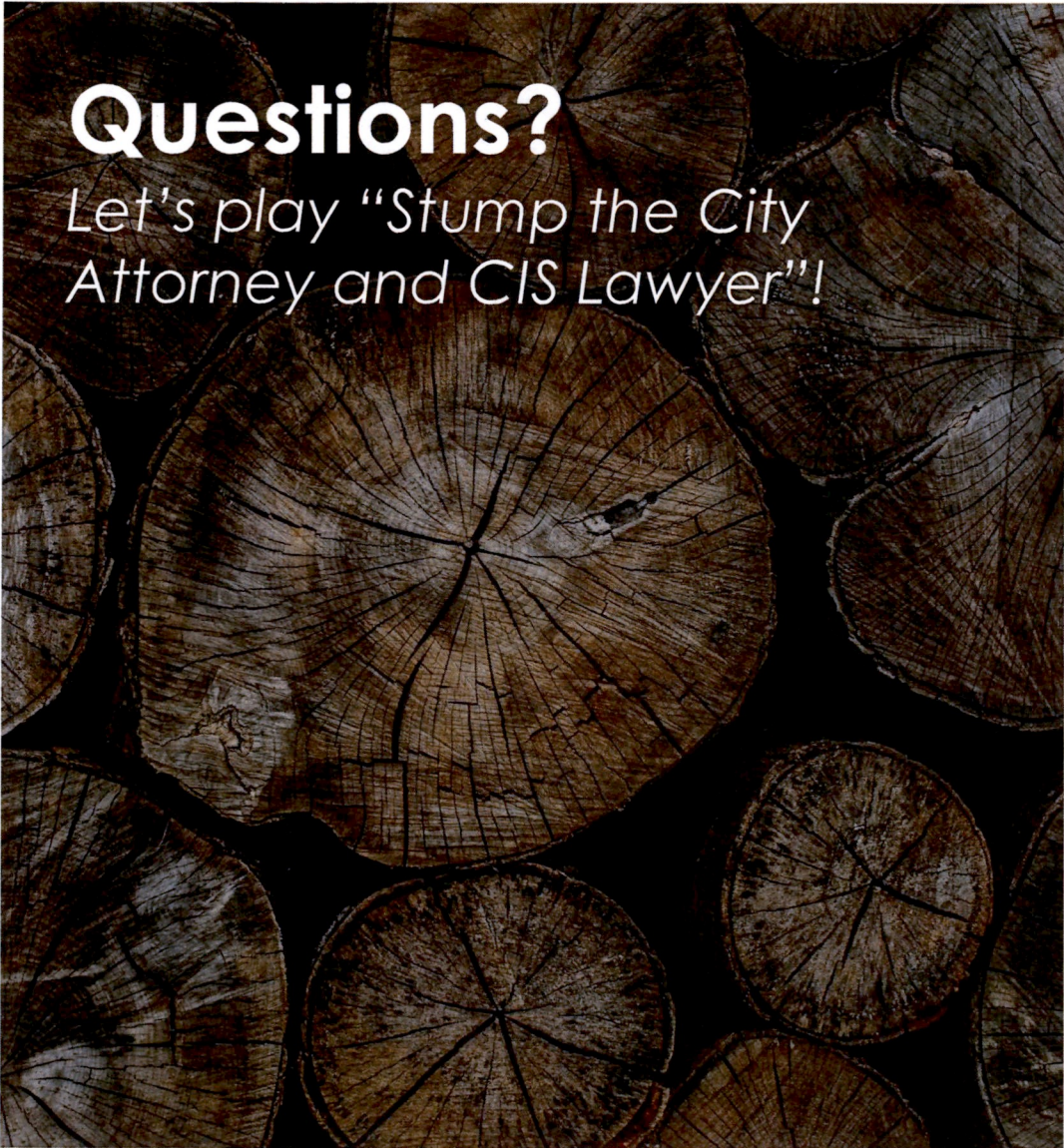
- (1) CIS recommendation: Implement a Policy
- (2) Professionalism matters on both your “official” and “personal” social media pages.
- (3) When conducting the City’s business on social media, you have no privacy rights.
- (4) Visitors to your social media pages have First Amendment rights. There are legal consequences if you don’t honor those rights (and may be coverage issues as well – see next slide).

Liability Coverage for Claims Against City Councilors

CIS provides coverage for claims against City Councilors who are “authorized to act on behalf of [the City], all **acting within the scope of their employment or duties**”

BUT: No coverage for public records/meeting violations

- If no CIS coverage, attorney fees and damages become the City's concern and situation
- If acting outside the scope, personal liability. (ORS 30.265)



Questions?

Let's play "Stump the City Attorney and CIS Lawyer"!

"... you can either ask the question or experience the answer ..."

- Author unknown

CIS

Thank you, City of Ashland City Council!

Douglas M. McGeary

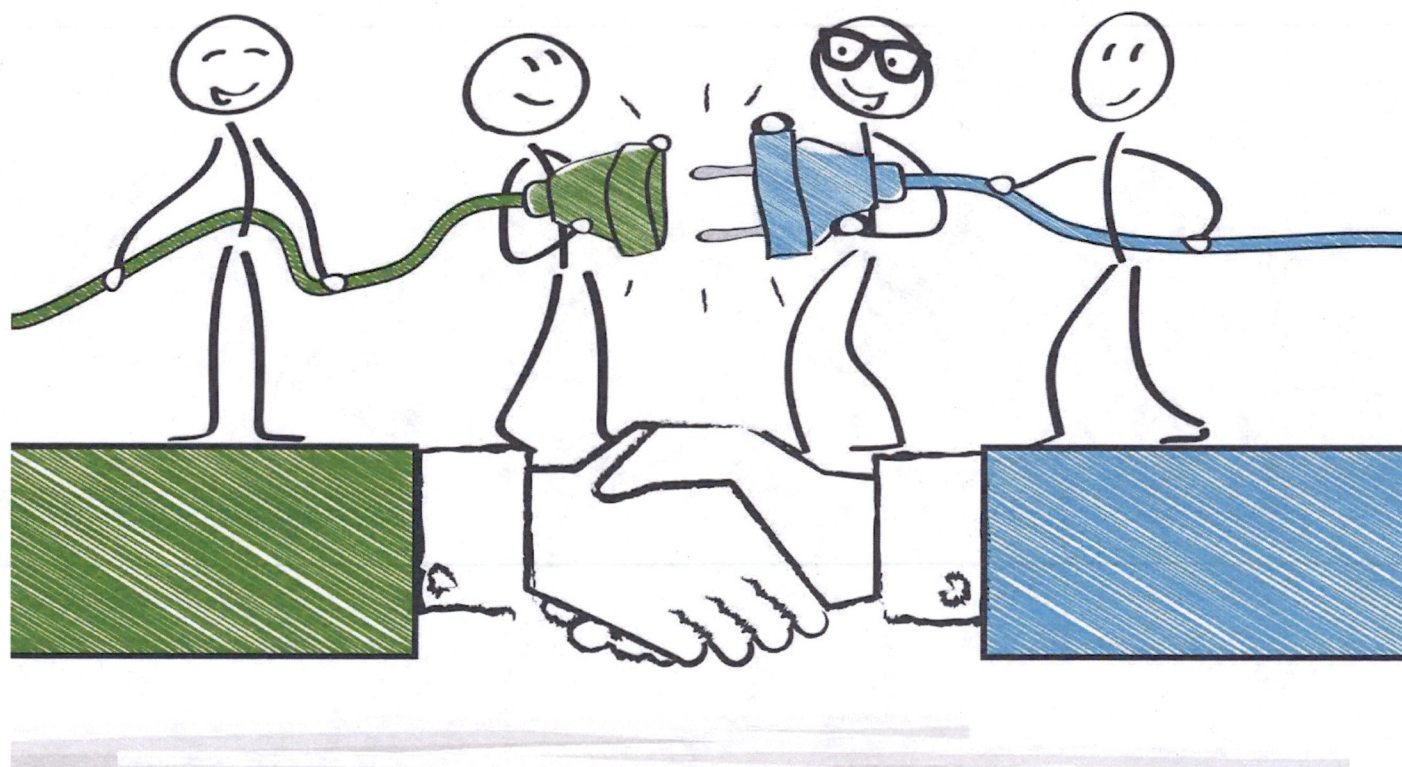
Acting City Attorney
City of Ashland
doug.mcgeary@ashland.or.us
(541)488-2107

Carmel Zahran

Assistant City Attorney
City of Ashland
Carmel.Zahran@ashland.or.us

Tamara E. Russell

Deputy General Counsel
Citycounty Ins. Services
trussell@cisoregon.org
503-763-3845



Proclamation

A Proclamation of the City Council of Ashland, Oregon condemning and rejecting antisemitism and reaffirming Ashland's commitment to ensuring our community is a safe and welcoming place to live, work, and visit:

WHEREAS, the City of Ashland takes great pride in diversity and respect for all people, and Jewish people are an important part of the city's fabric; and

WHEREAS, antisemitism is racism, hostility, prejudice, vilification, discrimination or violence, including hate crimes, directed against Jews, as individuals, groups or as a collective and/or their property – because they are Jews. Its expression includes attributing to Jews, as a group, characteristics or behaviors that are perceived as dangerous, harmful, frightening or threatening. It may take the form of teachings that proclaim the inferiority of Jews, or political efforts to isolate, oppress, or otherwise injure them. It may also include prejudiced or stereotyped views about Jews. Antisemitism is a type of racism, bigotry, and xenophobia and as such is closely related to, and often driven by similar motivations and forces as other forms of bigotry.

WHEREAS, the Holocaust – the state-sponsored persecution and murder of Jews by Nazi Germany and its collaborators between 1933 and 1945 – is the most extreme example of antisemitism in history; and

WHEREAS, the Anti-Defamation League recorded 331 hate crimes in Oregon during the years 2019 through 2022 and 25% of those crimes were antisemitic and 25,541 hate crimes were recorded in the United States for that same period of time and 34% were antisemitic; and

WHEREAS, the use of antisemitic language, conspiracy theories, holocaust denial, and hatred toward Jewish people has increased exponentially the past decade and has led to increased attacks against the Jewish people. According to the Federal Bureau of Investigation, while Jewish people account for not more than 2% of the U.S. population, Jews were the target of 55% of all religiously motivated hate crimes in recent years; and

WHEREAS, hatred and bias in any form are not acceptable in our community. The City of Ashland remains committed to our vision of welcoming the world and recognizing our diversity as a key strength for the City and our character; and

WHEREAS, any victims of antisemitism in the City of Ashland are urged to report any incidents — as hate crimes or bias-related events — so that local law enforcement can respond, track such incidents, and bring perpetrators to justice;

NOW, THEREFORE, The City Council of the City of Ashland, Oregon, on behalf of its citizens, and as supporters and allies of our Jewish community do hereby proclaim the City of Ashland's condemnation of antisemitism. The City of Ashland strongly stands against hate, bias or violence based on identity and remains committed to the principles of nondiscrimination and human rights. In Ashland we are Better Together.

Dated this 7th day of February 2023

Tonya Graham, Chair of the City Council

Melissa Huhtala, City Recorder



Black Alliance & Social Empowerment

325 S. Riverside Suite 4435, Medford, OR, 97501

Community@baseoregon.org



January 23rd, 2023

Re: City of Ashland City Council

City of Ashland
20 East Main St
Ashland, Oregon 97520

Dear Ashland City Council,

This letter of support is in favor of the Proclamation condemning and rejecting antisemitism, reaffirming the City of Ashland's commitment to ensuring our community is safe. As the Racial Equity Liaison for BASE Southern Oregon, we stand in solidarity with our Jewish community and humbly request the City Council support the condemnation of antisemitism by voting in favor of this important Proclamation. Thank you for your service to our beloved community.

Sincerely,

Brandon Lee

B.A.S.E. Racial Equity Police Liaison – Brandon Lee



Council Business Meeting

February 7, 2023

Agenda Item	2023 Standing Advisory Committee Appointments	
From	Melissa Huhtala	City Recorder
Contact	Melissa.huhtala@ashland.or.us 541-488-5307	

SUMMARY

Approval of the Mayor's recommendations for the annual appointments to the various Commissions, Committees, and Boards.

POLICIES, PLANS & GOALS SUPPORTED

AMC 2.04.090 (C) Regular Commission and Board Membership Appointments

Except for the Municipal Audit Commission (AMC 2.11) all regular advisory committees and boards not required by state law to be appointed by the City Council shall be appointed by the Mayor with the consent of the Council. The Mayor may request assistance or recommendations from Councilors in making appointments.

PREVIOUS COUNCIL ACTION

N/A

BACKGROUND AND ADDITIONAL INFORMATION

Appointments are three years with terms ending on April 30, 2026.

FISCAL IMPACTS

N/A

STAFF RECOMMENDATION

N/A

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to approve the Mayor's recommendations for the Standing Advisory Committee Appointments to the Public Arts, Housing and Human Services and Social Services and Racial Justice.

REFERENCES & ATTACHMENTS

Attachment 1: Applications:

Public Arts - Tessa Elbetta

Housing & Human Services - Brittney Bass, Crystal Munoz and Jason Mendoza

Social Equity & Racial Justice - Enrique Chacon



**APPLICATION FOR APPOINTMENT TO
CITY COMMISSION/COMMITTEE**

Please type or print answers to the following questions and submit to the City Recorder at City Hall, 20 E Main Street, or email melissa.huhtala@ashland.or.us. If you have any questions, please feel free to contact the City Recorder at 488-5307. **Attach additional sheets if necessary.**

Name Tessa Elbettar

Requesting to serve on: Ashland Public Arts Commis (Commission/Committee)

Mailing Address [REDACTED]

Physical Address [REDACTED]

Occupation Non-Profit Operations Mana Phone: Home

Work

Email

Fax

1. Education Background

What schools have you attended? The School of the Art Insitute of Chicago

What degrees do you hold?

Bachelor of Fine Arts with emphasis in Arts Administration

What additional training or education have you had that would apply to this position?

Operations Manager with the Jackson County Community Long-Term Recovery Group

2. Related Experience

What prior work experience have you had that would help you if you were appointed to this position?

At the LTRG, I provide staff support for our 12 committees, including keeping minutes, following up on action items,

dand enveloping tools for maximizing efficiency.and work in collaboration with 30+ local non-profits in the Alameda and Obenchain fire recovery efforts.

I'm also working on the Long-Term Recovery Plan, which requires a community review and planning process.

Do you feel it would be advantageous for you to have further training in this field, such as attending conferences or seminars? Why? Yes. While my educational background is in public art administration,

It would be beneficial to learn about regional, and state wide intitatives in public arts.



3. Interests

Why are you applying for this position?

I have a passion and vision for expanding public arts in Ashland.

I grew up in Los Angeles, which has very active public arts opportunities and programming.

I believe public arts improves quality of life for constituents.

4. Availability

Are you available to attend special meetings, in addition to the regularly scheduled meetings? Do you prefer day or evening meetings?

Yes. Evening meetings.

5. Additional Information

How long have you lived in this community?

3 years.

Please use the space below to summarize any additional qualifications you have for this position

Family legacy of public service, including design review board for city of Glendale

08/02/2022

Date

Tessa Elbettar

Signature



APPLICATION FOR APPOINTMENT TO CITY COMMISSION/COMMITTEE

Name Brittney Bass

Mailing Address _____

Occupation Customer Support Phone: Home [REDACTED]

1. Education Background

What schools have you attended? Southern Oregon University

What degrees do you hold? _____

Bachelors Degree French and Cultural Anthropology

What additional training or education have you had that would apply to this position?

In cultural Anthropology I learned about social justice and sytems of oppression and how it relates to our

society.

2. Related Experience

What prior work experience have you had that would help you if you were appointed to this position?

Volunteered at the Soup Kitchen in Ashland while I was in college. (Uncle Foods Diner)

Volunteered at Walker Elementary as PTO president

Do you feel it would be advantageous for you to have further training in this field, such as attending conferences or seminars? Why? I wouldnt be against any further training if it were to

become available to me.



3. Interests

Why are you applying for this position? _____

Concerned about the lack of affordable housing in Ashland and want
to work with others to fix this situation.

4. Availability

Are you available to attend special meetings, in addition to the regularly scheduled meetings? Do you prefer day or evening meetings? _____

I prefer early evenings or days

5. Additional Information

How long have you lived in this community? _____

31 years

Please use the space below to summarize any additional qualifications you have for this position

My main qualifications for this position is that I have lived in the community for
over 30 years and have seen the growth and change, not always for the better.

I am passionate about what happens next to the working class people and their
living situation.

01/20/23

Date

Bethany Bass
Signature



CITY OF ASHLAND

APPLICATION FOR APPOINTMENT TO CITY COMMISSION/COMMITTEE

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Name Crystal Munoz 

Requesting to serve on: Ashland Housing Committee (Commission/Committee)

Mailing Address 

Physical Address _____

Occupation Therapist Phone: Home 

Work _____

Email _____

Fax _____

1. Education Background

What schools have you attended? SOU, PSU

What degrees do you hold? BS, MSW, LCSW

What additional training or education have you had that would apply to this position?

With a masters in social work, I have an education in social justice that I feel would be relevant and

support being a committee member.

2. Related Experience

What prior work experience have you had that would help you if you were appointed to this position?

I have worked as a social worker with many individuals across the lifespan and in my work I have seen

how housing insecurity has impacted the well being and mental health of my clients.

Do you feel it would be advantageous for you to have further training in this field, such as attending conferences or seminars? Why? I believe that any available training in this field

would be supportive to this role.



3. Interests

Why are you applying for this position?

As an individual who has lived mainly in the Ashland/Talent area for the last 20

years, the increased issues surrounding affordable work force housing are a priority interest for me. I would like to be a part of contributing to meaningful change.

4. Availability

Are you available to attend special meetings, in addition to the regularly scheduled meetings? Do you prefer day or evening meetings? I am available for evening meetings.

5. Additional Information

~33 years in the Rogue Valley

How long have you lived in this community?

Please use the space below to summarize any additional qualifications you have for this position

I have grown up in the Rogue Valley and I have experienced as well as witnessed through my work and community the impact of housing insecurity.

Particularly impactful, after the Alameda fire, predatory rental hikes/prices are

now the norm. I fear that if nothing is done in the coming years, that more young folks who are the work force for this community will be forced to relocate or leave.

A healthy community includes opportunities and housing for all demographics

both in age and socioeconomic strata. It is time for this issue to be of top

priority.

11/26/23
Date


Signature





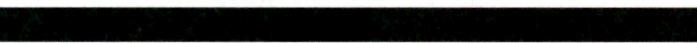
APPLICATION FOR APPOINTMENT TO CITY COMMISSION/COMMITTEE

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Name Jason Mendoza

Requesting to serve on: Ashland Housing Committee/Comission

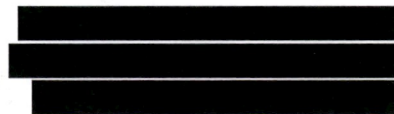
(Commission/Committee)

Mailing 



Occupation Area Coordinator for Student Apartments & Family Housing at Southern Oregon University

Phone: Home  _____



1. Education Background

What schools have you attended? Southern Oregon University, Bishop O'Dowd High School

What degrees do you hold? Bachelor's in Criminal Justice (2016) and I will be starting my Masters in Business Administration this Fall at 2022

What additional training or education have you had that would apply to this position?
Have assisted with providing housing for SOU employees and students, and provided rental assistance resources as well as processing the landlord portion of rental assistance

approval. I have also processed rent, rental payment plans, assisted in showing how new renters can transition utilities to their name, and apartment/house walkthroughs. Processed maintenance requests, address tenant concerns and questions. I also have other skills including, de-escalation, organization, personability, and being knowledgeable in my job assignments and content.

2. Related Experience

What prior work experience have you had that would help you if you were appointed to this position?

I currently work in an Ashland Housing capacity in that I work to provide housing for SOU students and employees here in Ashland.

Do you feel it would be advantageous for you to have further training in this field, such as attending conferences or seminars? Why?

Yes, I do feel it would be advantageous for me to have further training in this field such as attending conferences and seminars, as I have worked to provide housing to those in need, including those affected by COVID and the Alameda fires. I hope to attend these trainings and seminars if they are pertaining to how I can better assist folks, whether they are SOU affiliated or not, to seek and obtain sustainable housing in Ashland or even the greater Ashland area. I hope to work in a capacity that I can help make a difference in the community, not only for my family and I, but also others who are just starting out their lives and those with families as well. Ashland is a great place to live and raise a family with the culture, safety, and community that citizens share. I hope to contribute in a positive way to make the community better in providing more housing opportunities for folks wanting to live in this great city.



3. Interests

Why are you applying for this position?

I am applying for this position as I believe my experience working for SOU Housing and providing sustainable housing for SOU folks can help assist in those temporary tenants and contribute to the committee in a capacity that is both productive and rational, as I

know not all solutions or ideas can be attainable. My goal is to simply be another contributor with my experience, culture, and knowledge in the housing field here in Ashland.

4. **Availability**

Are you available to attend special meetings, in addition to the regularly scheduled meetings? Do you prefer day or evening meetings?

Yes, I can attend special meetings and regularly scheduled meetings based on my availability. Due to my job at Housing, I would need to prioritize it to assure I can remain living in Ashland as well. Lastly, I am starting my MBA program which will have evening classes. Currently, I only have class from late Sept-Dec. On Tuesday and Wednesday evenings. I would prefer evening meetings, as my job is typically Monday-Friday 8am-5pm banking operation hours.

5. **Additional Information**

How long have you lived in this community?

I have lived in Ashland from 2010-2016, and then again from 2019-Present.

Please use the space below to summarize any additional qualifications you have for this position

Experience processing rental, Creating rental payment plans, Create action plans with tenants to address move-ins, move-outs, transfers, adding roommates/partners, and seeking emergency housing. I have also worked with Jackson County in the realm of parole and probation, as well as the Department of Human Services Childwelfare and seeking and distributing housing resources to those in need. Obtained food for tenants for those with COVID/health concerns. Assisted in creating move-out plans for student and employees moving out of SOU housing for local housing in the area. Also provided child care information for families moving into SOU housing and other City of Ashland resources as well. Provide and organize large scale programming for tenants.

Jason Iosua Mendoza Signature

09/06/22 Date





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CITY COMMISSION/COMMITTEE

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Name Enrique Chacón

Requesting to serve on: Social Equity and Racial JC (Commission/Committee)

Mailing Address [REDACTED]

Physical Address _____

Occupation Professor Phone: Home [REDACTED]

Work [REDACTED]
Email [REDACTED]
Fax _____

1. Education Background

What schools have you attended? Autonomous University of Coahuila, Autonomous University of Puebla, University of Pittsburgh

What [REDACTED] PhD _____

[REDACTED]

What additional training or education have you had that would apply to this position?

I have received trainings at the University of Pittsburgh, Villanova University, the University of Tennessee related to

Racial Discrimination, Sexual harassment, and LGBTQ+Ally training.

2. Related Experience

What prior work experience have you had that would help you if you were appointed to this position?

I have volunteered in non-profit organizations that promote support to minorities such as Centro Hispano in Knoxville TN and Unete in Oregon.

Do you feel it would be advantageous for you to have further training in this field, such as attending conferences or seminars? Why? Yes. It is important to continue learning.



3. Interests

Why are you applying for this position? _____

I think I can contribute to this committee because I have been always committed to inclusion and diversity.

As a member of a minority, I think I can bring ideas and important issues to consider and to discuss.

4. Availability

Are you available to attend special meetings, in addition to the regularly scheduled meetings? Do you prefer day or evening meetings? _____

Evening, but I have flexible schedule.

5. Additional Information

How long have you lived in this community? _____

6 years

Please use the space below to summarize any additional qualifications you have for this position

I am a professor of Spanish at SOU. Since I started teaching I have been committed to bring equality among students.

I have extensive theoretical formation on decolonial, poscolonial, racial and intersectional issues.

I have received training in equity diversity and inclusion in workplaces, I have also received title IX training,

I have also completed sexual harassment trainings as well as Ally for the LGTBQ+ community.

Date

Signature



Council Business Meeting

February 7, 2023

Agenda Item	165 Water Street Appeal Findings Adoption	
From	Brandon Goldman Derek Severson	Interim Director of Community Development Senior Planner
Contact	Brandon.goldman@ashland.or.us Derek.severson@ashland.or.us	(541) 552-2076 (541) 552-2040

SUMMARY

Adoption of the written findings to formalize the Council decision from the January 3, 2023 appeal hearing for the phased mixed-use development of three properties at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue.

POLICIES, PLANS & GOALS SUPPORTED

Not applicable.

PREVIOUS COUNCIL ACTION

Council conducted an “on the record” appeal hearing on January 3, 2023. There were four grounds for appeal including that the staff report was not timely received, that staff introduced new information during the public hearing, that the Historic Commission Chair had *ex parte* contact with a neighbor, and that the Planning Commission misapplied the transitional area standard in AMC 18.4.2.050.B.1.

The Council rejected, and the appellants waived, the first three grounds for appeal during the hearing. On the fourth ground, the Council found that the property was in a transitional area and that the standard was applicable, however the Council found it was an error that specific measures to bring the project into compliance with the applicable standards were identified by the Planning Commission but the project was denied rather than approving it subject to the specific measures identified being made conditions of approval. AMC 18.5.2.080.G empowers the Planning Commission to amend plans to comply with applicable standards.

The Council reversed the denial on that basis, approving the project with conditions consistent with those identified by the Planning Commission to comply with the Historic District Development Standards. The applicant agreed to these conditions during the appeal hearing.

BACKGROUND AND ADDITIONAL INFORMATION

Not applicable.

FISCAL IMPACTS

There are no direct fiscal impacts related to the appeal of the planning action for 165 Water Street.

STAFF RECOMMENDATION

Staff believes the attached findings reflect the Council decision from the January 3, 2023 appeal hearing. Staff recommends that the Council adopt these findings as presented.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move to adopt the findings for PA-APPEAL-2022-00015 as presented.
- 2) I move to adopt the findings for PA-APPEAL-2022-00015 with the following amendments...

REFERENCES & ATTACHMENTS

Attachment #1: Draft Findings for Adoption

The full public record for the 165 Water Street application is posted on-line at:

<http://www.ashland.or.us/165Water>. This webpage includes a list of each of the meetings where the project was discussed with links to meeting packet materials, minutes and audio/video recordings of the meetings which are all included in the record for this appeal review.

February 7, 2023

FINDINGS, CONCLUSIONS & ORDERES

RECITALS:

- 1) Tax lots 2000, 2100 & 7100 of Map 39 1E 04CC are located at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue, and are zoned E-1 (Employment).
- 2) The application is an appeal on the record of the Planning Commission's denial of a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 165 Water St., 160 Helman St. and 95 Van Ness Av. The applicant's Phase I requests Site Design Review approval for five mixed-use commercial buildings with ground floor commercial spaces and two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site

work completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; and a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way. The proposal is outlined in plans on file at the Department of Community Development.

On the record appeals are subject to AMC 18.5.1.060.I. The grounds for the appeal as identified by the appellants here are: 1) That the staff report was not received seven days prior to the hearing; 2) That staff presented new information during the public hearing; 3) That a member of the Historic Commission had *ex-parte* contact with a member of the public outside of the public hearing; and 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas (*“For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.”*) was misapplied by the Planning Commission. As an appeal on the record, matters considered in this appeal are limited to these four grounds for appeal as identified in the appeal request.

3) The preliminary subdivision plat approval criteria are detailed in AMC 18.5.3.070 as follows:

A. **Approval Criteria.** The approval authority, pursuant to subsection [18.5.3.030.A](#), may approve, approve with conditions or deny a preliminary subdivision plat on findings of compliance with all of the following approval criteria.

1. The subdivision plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
2. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).
3. Access to individual lots necessary to serve the development shall conform to the standards contained in section [18.4.3.080](#) Vehicle Area Design.
4. The proposed streets, utilities, and surface water drainage facilities conform to the standards in chapter [18.4.6](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
5. All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas (e.g., landscaping, tree preservation, common areas, access, parking, etc.) is

ensured through appropriate legal instrument (e.g., Covenants, Conditions and Restrictions (CC&R's).

6. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.

B. Conditions of Approval. The approval authority may attach such conditions as are necessary to carry out provisions of this ordinance, and other applicable ordinances and regulations.

- 4) The criteria for Site Design Review approval are described in 18.5.2.050 as follows:

A. Underlying Zone: The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.

B. Overlay Zones: The proposal complies with applicable overlay zone requirements (part 18.3).

C. Site Development and Design Standards: The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.

D. City Facilities: The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.

E. Exception to the Site Development and Design Standards. The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.

1. There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or
2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.

5) The approval criteria for a Physical & Environmental Constraints Review Permit are detailed in AMC 18.3.10.050 as follows:

- A. *Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.*
- B. *That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.*
- C. *That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum development permitted by this ordinance.*

6) The approval criteria for an Exception to the Development Standards for Hillside Lands are detailed in AMC 18.3.10.090.H as follows:

1. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
2. *The exception will result in equal or greater protection of the resources protected under this chapter.*
3. *The exception is the minimum necessary to alleviate the difficulty.*
4. *The exception is consistent with the stated Purpose and Intent of chapter [18.3.10](#) Physical and Environmental Constraints Overlay chapter and section [18.3.10.090](#) Development Standards for Hillside Lands.*

7) The criteria for the approval of a Tree Removal Permit are described in 18.5.7.040.B as follows:

1. **Hazard Tree.** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
 - a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part [18.6](#).*
 - b. *The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section [18.5.7.050](#). Such mitigation requirements shall be a condition of approval of the permit.*
2. **Tree That is Not a Hazard.** *A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*

- a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.*
- b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
- c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.*
- d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.*
- e. *The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*

8) The criteria for an Exception to the Street Design Standards are described in AMC Section 18.4.6.020.B.1 as follows:

- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
- b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*
 - i. *For transit facilities and related improvements, access, wait time, and ride experience.*
 - ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
 - iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*
- c. *The exception is the minimum necessary to alleviate the difficulty.*
- d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

9) The Planning Commission, following proper public notice, held an electronic public hearing via Zoom on March 8, 2022 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, the electronic public hearing was continued at the applicant's request to

PA-APPEAL-2022-00015

February 7, 2023

Page 5

7:00 p.m. on Tuesday, April 12, 2022, again via Zoom, at which time additional testimony was received and additional evidence was presented. Subsequent to the closing of the hearing, the Planning Commission denied the application without prejudice.

10) Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by applicant Gil Livni and his agent Eric Bonetti, both of whom had participated in the Planning Commission hearing. Appeals of Planning Commission decisions are processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified in the notice of appeal were: 1) That the staff report was not received seven days prior to the hearing; 2) That staff presented new information during the public hearing; 3) That a member of the Historic Commission had *ex parte* contact with a member of the public outside of the public hearing; and 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas ("*For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.*") was misapplied by the Planning Commission. As an appeal on the record, Council consideration is limited to these four grounds for appeal which were clearly and distinctly identified in the appeal request. As provided in AMC 18.5.1.060.I.5.b., in their review "*the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal.*"

An appeal hearing was initially scheduled for June 21, 2022, however subsequent to the mailing of the Notice of Appeal to the parties, the appellant/applicant requested that the appeal hearing be postponed and submitted a 245-day extension to the 120-day rule, the maximum extension allowed under ORS 227.178(5) on June 16, 2021. The appeal hearing was re-scheduled for January 3, 2023 to allow for a timely final decision from the city.

11) The City Council, following proper public notice held an appeal hearing on the record on January 3, 2023 at which time oral arguments were received from the parties. Subsequent to the closing of the hearing, the City Council rejected the first three grounds for appeal, which had been waived by the applicant during the hearing. However, with regard to the fourth ground for appeal (*That the standard in AMC 18.4.2.050.B.1 addressing 'Transitional Areas' was misapplied by the Planning Commission*) the Council found that the Planning Commission had erred in identifying specific means by which the application could be modified to meet the Historic District Development Standards including the 'Transitional Areas' standard but subsequently denying the application rather than exercising its power to amend plans to approve the application subject to the conditions identified. On that basis, the Council supported the appeal on the fourth ground, reversing the Planning Commission denial, and approving the application subject to conditions previously recommended by staff and to new conditions to achieve compliance with the Historic District Development Standards including the Transitional Areas standard. These conditions were agreed to by the applicant/appellant during the appeal hearing.

Now, therefore, the City Council of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The City Council finds that it has received all information necessary to make a decision based upon the record of the Planning Commission decision, the appeal notice and subsequent written and oral arguments received.

2.2 The City Council finds that the proposal meets the applicable criteria for Subdivision preliminary plat approval in AMC 18.5.3.070; for Site Design Review approval in AMC 18.5.2.050; for a Physical & Environmental Constraints Review Permit for the development on severe constraints lands with slopes greater than 35 percent and floodplain corridor lands in AMC 18.3.10.050; for an Exception to the Development Standards for Hillside Lands in AMC 18.3.10.090.H; and for Tree Removal in AMC 18.5.7.040.B.

2.3 The City Council notes that the appellants' first ground for appeal is, *"That the staff report was not received seven days prior to the hearing."* The appeal notice further explains that, *"The staff report recommending denial of the application was not received seven days before the Historic Commission Hearing nor the Planning Commission Hearing. This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.C.3.g or other law in ORS 197.763 (3)(i) requires that a copy of the City's staff report and recommendations to the hearings body will be available for review at no cost at least seven days before the hearing."* The appellants waived this ground for appeal during the appeal hearing.

The City Council further notes that both AMC 18.5.1.060.C.3.g and ORS 197.763(3)(i) require that public notices include a clear statement that the staff report will be available seven days prior to the Planning Commission hearing, and AMC 18.5.1.060.C.3.g indicates that a copy will be provided on request. Specifically, ORS 197.763(3)(i) requires that the notice provided by the jurisdiction, *"State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost."* Similarly, AMC

18.5.1.060.C.3.g requires that the Notice of Public Hearing contain, *“A statement that a copy of the City’s staff report and recommendation to the hearings body will be available for review at no cost at least seven days before the hearing, and that a copy will be provided on request at a reasonable cost.”* The City Council finds that the public notice for the application (see https://www.ashland.or.us/SIB/files/00_Water_165_PA-T2-2022-00037_NOC.pdf) indicated that, *“A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report will be available on-line at www.ashland.or.us/PCpackets seven days prior to the hearing. Copies of application materials will be provided at reasonable cost, if requested.”* The City Council further finds that there is no indication in the appeal notice or within the record that the applicant ever requested the staff report. Staff has indicated that the staff report was provided to the applicant six days prior to the Planning Commission hearing via e-mail and that it was posted on-line at that time. Given that the staff report was provided six days prior to the hearing without being requested, the City Council does not believe that this was a procedural error which adversely impacted the applicant/appellant, and finds that any error with the one-day delay in posting the staff report on-line has been remedied by the applicant’s ability to appeal, which they have taken full advantage of. As such, the City Council rejects this first appeal issue.

2.4 The City Council notes that the appellants’ second ground for appeal is, *“That staff presented new information during the public hearing.”* Their appeal notice explains that, *“New information was presented by staff during the hearing that had never been discussed previously with the applicant, the project team or during the previous hearing. The project team believes this new information regarding the Transit Triangle standards created confusion and obscures the relevant criteria Site Design and Use Standards and Historic District Design Standards through the introduction of irrelevant municipal code sections.”* The appellants waived this ground for appeal during the appeal hearing.

The City Council notes that the new information referenced consisted of staff pointing out how building massing was addressed in terms of compatibility with adjacent residential buildings elsewhere in the Ashland Land Use Ordinance (in the Transit Triangle at AMC 18.3.14.060 and in the Croman Mill District at AMC 18.3.2.060.B.7.c). The City Council finds that this information was presented by staff while both the public hearing and the public hearing record were open to the submittal of any new information (see page 5 of 8 of the April 12, 2022 Minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf.) The Council further finds that staff explained clearly during the hearing that this information was not applicable to the subject property specifically and was instead being provided for reference to show how adjustments for compatibility between commercial and residential development were dealt with elsewhere in the Ashland Land Use Ordinance as the Planning Commission was considering what

might constitute “*appropriate* adjustments.” (see page 7 of 8 of the April 12, 2022 Minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf.)

The City Council finds that new information may be presented during an open public hearing, and in this instance, the new information was directly from the adopted Ashland Land Use Ordinance and it was clearly explained that it was not directly applicable to the current application and was instead being presented for reference. On that basis, the Council rejects this second ground for appeal.

2.5 The Council notes that the third ground for appeal is, “*That a member of the Historic Commission had ex parte contact with a member of the public outside of the public hearing.*” The appellants’ Notice of Appeal goes on to explain that, “*The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. One of the co-chairs of the Historic Commission had communications with a member of the public outside the hearing process. Though unclear to the applicant team during the Historic Commission meeting at 4.6.20222 what the substance of the ex parte comments were, the process is flawed when it is clear that conversation(s) occurred outside the hearing. This interaction taints the integrity of the hearing process. This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.D.2 requires that the hearing body be impartial and free from potential conflicts of interests and pre-hearing and outside of the hearing contacts. It is unclear what exactly occurred between the co-chair of the Historic Commission and a member of the public but there was a declaration of ex parte*”. The appellants waived this ground for appeal during the appeal hearing as well.

The Council notes that the Historic Commission is not a decision making body, and serves in an advisory role to the Planning Commission. AMC 18.5.1.060.D.2 specifically references only the Planning Commission and City Council. The City Council finds that in this instance, the *ex parte* contact in question occurred after the Historic Commission had conducted its March meeting and made its initial advisory recommendation to the Planning Commission. When the application came back to the Historic Commission for further consideration in April of 2022, the *ex parte* contact in question was declared by Historic Commission Chair Beverly Hovenkamp. The minutes for the April 6, 2022 meeting note, “*Hovenkamp disclosed that she had ex-parte contact with Mr. Brouillard, a neighbor who submitted his comments to the Commission via email. Hovenkamp expressed that this would have no impact on her decision moving forward.*”

The Council further notes that in a February 24, 2022 e-mail, Mark Brouillard - who is a neighbor of the project site and who had attended a Historic Commission meeting in 2018 to comment on a previous development proposal for the subject property - expressed concerns that during the 2018 meeting, a presenter from Rogue Planning and Development Services had commented that “*now*

that there aren't any pesky home owners here we might get something accomplished." Mr. Brouillard's email indicated that he was present as a home owner at that 2018 meeting and made objection to this comment at the time. He further suggested that the Historic Commissioners at the time had laughed and seemed entertained, and he took their response at the time as an expression of bias. (Mr. Brouillard's e-mail is on pages 1-2 of 18 at https://www.ashland.or.us/SIB/files/Water_165_PA-T2-2022-00037_Public_Comment_Record.pdf).

The City Council further notes that, as reflected between 44:45 and 47:15 of the Historic Commission's April 2022 meeting recording, Chair Hovenkamp stated that the concerns over bias expressed by neighbor Mark Brouillard had not been addressed at the March 2022 hearing, so she had called Mr. Brouillard subsequent to the March meeting as a courtesy, after the Commission had already made its initial recommendation. She indicated that she told him it was unfortunate that a disrespectful comment had been made at the 2018 meeting and that the Historic Commission was working hard to be impartial. She explained that this was why he had raised the importance of *ex parte* contact conversations and being careful about recusals. She indicated that she was unsure if this call made Mr. Brouillard feel any better, but said she felt it was important as a courtesy to respond directly to the concerns he had raised on behalf of the Historic Commission.

The City Council also notes that during that April 2022 Historic Commission meeting, planning staff directly asked Chair Hovenkamp if any aspect discussed relating to the project during that call would bias her going forward; she responded that when Mr. Brouillard raised issues he had raised previously during the hearing, she pointed out to him that it seemed the Commission had heard his concerns at the meeting and they were reflected in the Commission's initial recommendations. She confirmed that nothing said during the conversation would have the effect of biasing her moving forward. Neither the other Historic Commissioners present, the applicant or his agents challenged Ms. Hovenkamp's *ex parte* contact declaration at the meeting, although the applicant did subsequently raise the issue of Hovenkamp's *ex parte* contact during testimony at the April 2022 Planning Commission hearing (see page 6 of 8 in the April 12, 2022 minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf).

The Council finds that, procedurally speaking, Chair Hovenkamp declared the *ex parte* contact prior to the Historic Commission's April meeting, as recognized in the appellants' appeal notice, explained the substance of the contact and confirmed that it would not bias her moving forward. Her declaration went unchallenged and, on that basis, the Council reject this third ground for appeal.

2.6 The Council notes that the fourth and final ground for appeal is, “*That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas was misapplied by the Planning Commission.*” The appellants’ appeal notice cites the Overlay Development Standards (AMC 18.5.2.050.B) and Historic District Development Standards (AMC 18.4.2.050) and specifically references the ‘Transitional Areas’ standard in AMC 18.4.2.050.B.1 which reads:

For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

The appellants go on to indicate that denial on this basis is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.4.2.050 requires that projects at the boundary between zones or overlays may have appropriate adjustments considered but that the underlying zoning standards and requirements applicable to the subject property must be kept in sight.

The appellants argue that the transitional areas standard applies only to property “*at the boundary*” and suggest that because the boundary between zones here is at the centerline of the street, the standard cannot be applied. The Council finds that this argument goes beyond the substance of the written argument submitted by the submittal deadline, and further finds that as provided in AMC 18.2.1.030, zoning boundaries typically are lot lines, the center line of streets or railroad rights-of-way, and limiting the standard to apply only to those properties immediately abutting the boundary line – rather than to properties across the street from one another - would severely limit the applicability of the standard. The Council finds that the transitional area is an area in the vicinity or across the street, rather than abutting the boundary line itself, like other historic district development standards in AMC 18.4.2.050.B. and that the subject property here along Helman Street is within a transitional area and subject to the standards.

In considering this final appeal issue, the Council notes that within the adopted findings for their decision, under 2.7 the Planning Commission noted that “... Site Design Review approval requires a demonstration that “*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*” The Planning Commission further noted that the subject properties were located within the Skidmore Academy Historic District and as such were subject to the Historic District Development Standards in AMC 18.4.2.050. As explained in AMC 18.4.2.050.A.2:

The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District...If a development requires a Type I, II, or III review procedure (e.g., Site Design Review, Conditional Use Permit) and

involves new construction, or restoration and rehabilitation, or any use greater than a single-family use, the authority exists in the law for the Staff Advisor and the Planning Commission to require modifications in the design to match these standards. In this case the Historic Commission advises both the applicant and the Staff Advisor or other City decision maker.

The City Council notes that as provided in AMC 18.2.4.040.D, the Historic Commission is charged *“To review and make recommendations concerning the improvement of designated historic properties in connection with the issuance of building permits, zone changes, conditional use permits, variances, sign permits, and site reviews.”* Here, the Historic Commission reviewed the initial proposal at its March 2, 2022 meeting. During that review, the Historic Commission found that there was no historical precedent in Ashland for three nearly identical, large buildings being constructed side by side in a historic district. The Historic Commission recognized that both the building designs and landscaping here were excellent, and that the high quality of the proposal helped to mitigate the large, identical buildings to a degree, however the Historic Commission ultimately determined that the initial designs were too repetitious, and that this repetition emphasized the significant difference in height and character relative to the historic residences on the other side of Helman Street. The Historic Commission specifically expressed concerns that in terms of the Historic District Development Standards, the height, scale and massing of the three buildings (**AMC 18.4.2.050.B.2-4**) as initially proposed along Helman Street for Buildings #1, #3 and #4 were out of scale with the one- to one-and-a-half-story historic residential buildings across Helman Street. The Historic Commission recommended that the designs be revisited to look at changing the height of the individual stories, noting that 11-foot ceiling heights seemed excessive where building height was at issue, and also recommended potentially reducing the number of stories on at least the two end buildings (Buildings #1 and #4). The Historic Commissioners explained that if the buildings on Helman were lower, the remaining buildings could cascade around the Van Ness corner as taller buildings there would be mitigated by the grade change and the fact that there was not a single-story, historic residential streetscape across Van Ness Avenue. The Historic Commission concluded their March recommendations noting that the designs would benefit from a greater variety of material treatment and finishes, and greater variations in height and/or number of stories to relieve the monotony as they present to the historic Helman Street streetscape.

At its April 6, 2022 meeting, the Historic Commission reviewed design revisions which had been provided in response to their March 2, 2022 comments. These revisions included stepping the center bay in the façade of Buildings 3 & 4 back three feet from the wall plane of the second floor and adding a shed roof to emphasize this step back; cutting back the roofline to reduce the massing of the overhang; changing some surface and material treatments including adding a brick base, using white and lighter materials to de-emphasize the third story, and using open wire or mesh

railings where solid railings were previously proposed; and increasing the length of the pedestrian overhang on the ground floor to add shadow lines and emphasize the pedestrian scale of the building at the sidewalk. After reviewing these revisions, the Historic Commission found that while the incremental changes were effective in addressing some issues with regard to the building façades and pedestrian amenities, the revisions fell short in addressing the larger issues identified in the March meeting, which had to do with the height, scale, and massing of the buildings as they relate to the Historic District Design Standards (AMC 18.4.2.050.B.2-B.4.)

The Historic Commission noted that the three buildings facing Helman Street with heights near 40 feet and three stories would overwhelm the mostly single-story historic residences across the street, and that these proposed buildings failed to achieve an appropriate scale and façade compatibility to the adjacent historic streetscape. Additionally, the Historic Commission further noted that the zero setback to the sidewalk exacerbated the building mass and scale and would overwhelm the adjacent pedestrian traffic. The Historic Commission pointed out that by comparison, the Plaza Inn & Suites hotel on the same side of Helman Street, nearer to downtown, has 15- to 20-foot setbacks and is only two-stories in height at the street. The Historic Commission concluded that while the building architecture and landscape design on this project were very attractive and high quality, the buildings were just not compatible with the scale of the historic district residences in the impact area, directly across Helman Street, and for these reasons, the Historic Commission noted that they could not support the application and recommended that it be denied by the Planning Commission.

In considering the proposal as it relates to the Historic District Development Standards and in light of the Historic Commission's recommendation, the Planning Commission found that the standard addressing "Transitional Areas" in AMC 18.4.2.050.B.1 was of particular importance here. This standard provides that:

For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

In this instance, the subject properties are located at the boundary between E-1(Employment) and R-3(High Density Multi-Family Residential), and there is M-1 (Industrial), C-1 (Commercial), and R-2 (Low Density Multi-Family Residential) zoning a short distance away. Similarly, the property is at the outer edge of the Skidmore Academy historic district, with district boundary to the north, the Railroad Addition historic district immediately across Water Street, and the Downtown historic district a half-block to the south. The Planning Commission found that the subject properties were

located within a transitional area, and that to address the transitional area standard, the building designs needed to incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility with the transitional area which includes the existing historic residential block across Helman Street, while not losing sight of the underlying standards and requirements applicable to the subject properties which are zoned E-1 (Employment).

The Planning Commission noted that the applicant had provided a number of examples of more commercial scale buildings in the vicinity, many of which were historical buildings which were no longer standing, to demonstrate compatibility and the applicant also emphasized that the designs proposed were within the maximum allowances of the E-1 zone. The Planning Commission found, and the City Council concurs, that the transitional area standard was intended to address compatibility with the transitional area as it exists, rather than with historic buildings which are no longer standing. AMC 18.4.2.050 explains “... *sensitivity to surrounding buildings and the existing land use patterns is essential to the successful development* (AMC 18.4.2.050.A.1, emphasis added)” and “*The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District* (AMC 18.4.2.050.A.2, emphasis added).” The Planning Commission further found, and the Council again concurs, that the drawings illustrating each design standard are described as applying to historic buildings “*on and across the street* (AMC 18.4.2.050.B.2)” or “*in the immediate vicinity* (AMC 18.4.2.050.B.3 & B.4).”

The Planning Commission further found, and the Council concurs, that considerations of compatibility were not limited to a simple comparison of the allowances of the zoning district (i.e. the E-1 zone allowing a 40-foot height and 85 percent lot coverage where the R-3 zone allows a 35-foot height and 75 percent lot coverage does not mean that any building complying with the allowances of the E-1 zone is automatically compatible with historic buildings in an immediately adjacent R-3 zone), but for transitional areas require “*appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment*” which address compatibility with the immediate vicinity while still considering the allowances of the underlying zone.

The Planning Commission ultimately concurred with the Historic Commission in finding that the three very similarly designed three-story buildings facing Helman Street with heights of nearly 40 feet failed to achieve an appropriate scale and have heights and massing which, as designed, were not compatible with the adjacent historic streetscape. The Planning Commission noted that these issues were exacerbated by the buildings’ very similar architectural and material treatments. The Planning Commission found that here, measures such as setting the buildings back further and

placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness could constitute “appropriate adjustments” to address compatibility with the transitional area by mitigating the buildings height, mass and scale, and could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. The Planning Commission further found that the designs as revised failed to address the recommendations provided in March; did not incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility; and failed to satisfy the Historic Development Design Standards for height, scale and massing (AMC 18.4.2.050.B.2-B.4). The Planning Commission concluded that the application as presented had not sufficiently addressed the Historic District Development Standards, and as such could not be found to have fully satisfied the approval criteria for Site Design Review. The application was thus denied without prejudice, which allows the applicant to make a revised application for the same property immediately where they would otherwise be required to wait at least 12 months.

For the Council it is clear that the Planning Commission considered the application materials and information presented by the applicant during the hearings as well as testimony by neighbors and the recommendations of the Historic Commission. In their decision, the Planning Commission noted specific measures such as setting the buildings back further and placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness which the Commission indicated constituted “appropriate adjustments” to address compatibility with the transitional area by mitigating the buildings’ height, mass and scale, and which could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. The Council concludes that, while the Planning Commission was correct in considering the application in light of the ‘Transitional Areas’ standard, the Commission did err in applying the standards in that it identified specific “appropriate adjustments” which could be made in order to achieve compliance with the applicable standards, but rather than using its power to amend plans in AMC 18.5.2.080.G and approving the proposal with the specified conditions, the Commission instead denied the application.

On that basis, the Council accepts this fourth ground for appeal, reverses the Planning Commission’s denial of the application, and approved the application subject to the recommendations and conditions found in the staff reports presented to the Planning Commission for their March and April 2022 hearings and to the following conditions necessary to comply with

the Historic District Development Standards including the 'Transitional Areas' standard and the standards for height, scale and massing, which the applicant/appellants accepted during the appeal hearing: 1) That the design of the southernmost building (#4) shall be modified to step back the third story at least six feet from the second story façade; 2) That the middle building (#3) shall be set back at least six feet from the sidewalk, and this additional setback area between the face of the building and the street shall be improved as plaza space, and the final building design shall be modified to step back the third story at least six feet from the second story façade; 3) That the three buildings facing Helman Street shall have wall plate heights on their residential floors (i.e. the second and third stories) no greater than ten (10) feet to provide for nine (9) foot floor-to-ceiling heights which are unobstructed by mechanical ducting or plumbing installation; 4) That the final building designs shall incorporate the material changes previously presented to the Planning Commission for its April 2022 hearing.

2.7 In considering the preliminary plat approval for the proposed Subdivision, the Council finds that there are no applicable City-adopted neighborhood or district plans which relate to the subject property, and previous land use approvals for the subject property have expired.

As detailed in the Site Design Review discussion below in section 2.8, the Council finds that the proposed lots and associated development proposed conform to the requirements of the underlying zone, per part [18.2](#); any applicable overlay zone requirements, per part [18.3](#); and any applicable development standards, per part [18.4](#) (including parking and access, vehicle area design, tree preservation, solar access and orientation). The Council further finds, as discussed in section 2.8 below that the proposed streets, utilities, and surface water drainage facilities conform to the standards in chapter [18.4.6](#), and allow for transitions to existing and potential future development on adjacent lands.

The Council further finds that all proposed private common areas and improvements, have been identified on the preliminary plat and the maintenance of such areas, including landscaping, common areas, access, parking) shall be ensured through appropriate legal instruments (i.e. Covenants, Conditions and Restrictions (CC&R's)) as conditioned below. The applicant has indicated that any required State and Federal permits, will be obtained prior to development.

2.8 The Council notes that the applicant's Phase I proposal here requests Site Design Review approval for five mixed-use buildings as well as associated surface parking, utility infrastructure and street improvements, with the remaining three building sites to be developed in a later phase. Each of the five proposed buildings would include a shared wall, two-unit commercial office ground floor, and two three-bedroom residences on the upper floors. When all phases are complete, the eight buildings would include a total of 16 residential units above the ground floor commercial spaces.

The City Council finds that the proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and

dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.

The City Council finds that the proposal complies with applicable overlay zone requirements of part 18.3, except where Exceptions have been requested. Compliance with the applicable overlay zone requirements for the Physical and Environmental Constraints Overlay detailed in AMC 18.3.10 is discussed in sections 2.10 and 2.11 below. In terms of the Site Development and Design Overlays of AMC 18.3.12, the Council finds that the subject property is located within both the Detail Site Review and Historic District Overlays. The standards for both overlays are found in part 18.4, and both are discussed further below. With regard to the standards for the Residential Overlay of AMC 18.3.13, the City Council finds that the subject property is within the Residential Overlay and that the revised floor plans presented for Planning Commission review at the April 2022 meeting show adjustments to the area configurations so that all five buildings under consideration have at least 65 percent of their ground floors dedicated to commercial use as required for mixed use buildings within the Residential Overlay.

The City Council finds that the proposal complies with the applicable Site Development and Design Standards of part 18.4. Seven of the eight buildings will be directly adjacent to the public streets with direct connections from the public sidewalks to the entrance of the commercial spaces provided, while one building (Building #5) is behind a street facing building. This building is accessed from the pedestrian walkways that connect to the public sidewalk. All proposed parking is to the side and rear of the buildings, and the residential parking is to be within the footprints of the buildings in enclosed garages. Bicycle parking is provided throughout the property.

The City Council notes that within the Detail Site Review overlay, developments that are greater than 10,000 square feet in gross floor area or contain more than 100 feet of building frontage are required to provide at least ten percent of the building area in plaza space which includes four of six requisite features. As initially proposed and considered by the Planning Commission in March of 2022, the application included a request for Exception to this standard in order to provide 3,087 square feet rather than the required 5,624 square feet of plaza space, however the revised submittals provided for the April of 2022 meeting revisited the plaza space requirements with a clearer and more detailed plan of the plaza space to be provided in each phase. As now proposed, the City Council finds that the plaza space is demonstrated to exceed the minimum requirement. Four distinct plaza areas totaling 8,774 square feet are now shown, where a minimum of 5,581 square feet is required, and as such the City Council concludes that the application no longer requires an Exception to the plaza space standard.

The subject property is located within the Skidmore Academy Historic District and is subject to the Historic District Development Standards. Compliance with the Historic District Development Standards was the most significant point of the appeal, and is discussed in detail in section 2.5 above. The Council finds that with the conditions included requiring design modifications for the buildings along Helman Street, the application complies with the Historic District Development Standards.

In considering off-street parking requirements and the on-street parking credits requested, the City Council notes that the application materials explain that the proposal requires 15.72 vehicle parking spaces for commercial uses in Phase One and an additional 9.198 parking spaces for commercial office use in Phase Two for a total of 25 (24.91) off-street parking spaces required for the commercial office uses. In addition, 32 off-street parking spaces are required for the two- and three-bedroom residences proposed. This residential parking is proposed to be provided within the private garages. The application proposes to provide a total of 17 of the 25 required commercial off-street parking spaces on site, and to rely on eight on-street parking credits. With the proposed Van Ness Street improvements, seven new on-street parking spaces will be created in bays, in addition to the five on-street spaces available on Water Street and seven on-street spaces present on Helman Street. The Council notes that during the 2017 application to develop 165 Water Street, there was lengthy discussion of the appropriate magnitude for a reduction in off-street parking requirements based on on-street credits, based on a recognition that while there was significant street frontage where on-street parking was allowed, there was also a spill-over in parking demand from the nearby downtown during the busiest times. The Planning Commission at that time ultimately determined that an eight space on-street credit was appropriate, particularly given that the applicant was proposing to create additional on-street parking spaces and in the Council view, the similar request here is reasonable.

Site Design Review approval also requires a demonstration “... *that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*” The Council finds that adequate city facilities exist to service the proposed development, and the application submittals include a Preliminary Utility Plan (C2.0), a Preliminary Grading & Drainage Plan (C1.0), and a Stormwater Diagram (L3.0). The application materials speak to the individual utilities as follows:

- **Water:** There is an existing 16-inch water main in Water Street, a 16-inch main in Van Ness Avenue, and a four-inch water main in Helman Street. New water services are proposed to be installed by the applicant adjacent to the street frontages, with four meters per structure proposed. There is a fire hydrant on Water Street and another fire hydrant across Helman Street from the subject property. The application indicates that the water line sizes and pressures are substantial enough to comply with the water needs for the proposed development.
- **Sanitary Sewer:** There is an eight-inch sanitary sewer line in the Water Street, and the applicant indicates that in discussion with the Wastewater Department Supervisor, there are no capacity issues with the public sanitary sewer lines. New sewer connections will be made to connect the proposed structure to the public sanitary sewer infrastructure.
- **Electrical:** Substantial upgrades are required to the electrical infrastructure. Primary power will be extended from a pole on Helman and Van Ness, and a new transformer will be installed. The new transformer will connect to a new junction box to be located on the south side of the public alley. A public utility easement will be provided for all public utilities proposed on the private property.
- **Storm Sewer:** There is a 12-inch storm sewer main in Van Ness Avenue, and a ten-inch

main in Water Street. The applicant indicates they have consulted the Street Division, and there are no capacity issues with the city's storm sewer facilities. The application emphasizes that because the post development peak flows from the site may not exceed pre-development peak flows, the proposal should have little discernable impact on the storm sewer system.

- **Transportation:** According the Transportation System Plan (TSP), both Water and Van Ness Avenue and Water Street are classified as Neighborhood Collectors, a street classification which anticipates less than 1,500 average daily trips (ADT) meant to provide access to residential and neighborhood commercial areas.

Water Street has a 40-foot right-of-way and has a varied improvement width. Water Street is currently "improved" with curb and gutter on the subject property side of the street (west) and curb, gutter, and a five-foot curbside sidewalk on the opposite (east) side. The applicant proposes to upgrade Water Street with five-foot hardscape park row constructed of a pervious surface and eight feet of sidewalk. A public pedestrian access easement will be provided to provide the required pedestrian access across the property.

Van Ness Avenue has a variable width right-of-way with 60-feet of ROW at the west side of the property which decreases to 40-feet at the intersection of Van Ness and Water Street. Van Ness Avenue is improved with curb, gutter and a four-foot curbside sidewalk. The proposal is for the majority of the sidewalk along the frontage of the proposed building to be brought into conformance with the city standard street cross-section (five-foot hardscape park row planting strip and an eight-foot sidewalk), but the sidewalk is proposed to transition to curbside adjacent to the new, on-street parking bays. Where the parking bays are proposed, the street trees are proposed to be provided in bump-outs.

Helman Street is classified as an Avenue, and is presently improved with a landscaped park row planting strip and sidewalk. This historic development pattern is proposed to be retained and new street trees are proposed to be added within a reconstructed park row.

The public alley along the south side of the property cannot be completed through to Helman Street due to the topography, and the applicant proposes to install a pedestrian stairway to provide pedestrian access to and through the development.

In terms of adequate transportation, the submitted materials include a new Traffic Impact Analysis (TIA) prepared by Kelly Sandow of Sandow Engineering. The new TIA concludes that all intersections meet mobility standards with the development in place, that the addition of development traffic will not substantially increase queueing conditions over the background conditions, and that all site driveways are projected to operate safely and efficiently. Where a previous TIA prepared for a development on the subject property in 2017 had identified mitigation necessary at the intersection of Water Street and North Main Street, no mitigation has been identified as necessary with the current analysis.

2.9 The Council notes that the original application submittal included a request for an Exception to the Street Design Standards in order to allow street trees to be provided in bump-outs within the Van Ness Avenue right-of-way rather than in standard five-foot by five-foot street tree grates within the sidewalk corridor in order to enable the placement of on-street parking in bays. The Council finds that while neither Table 18.4.6.040.F nor the cross-section illustrated in Figure 18.4.6.040.G.4.a. detail on-street parking in bays, the narrative description in AMC 18.4.6.040.G clearly notes that parking “.... *may be provided in 7 ft bays rather than as a continuous on-street lane.*” Neither the table, the figure or the description address the treatment of street trees where parking is provided in such bays, however the City Council finds that placing street trees within bump-outs in the right-of-way as proposed in order to provide additional public parking in bays while still providing required street trees is consistent with the intent of the standards and an Exception to the Street Design Standards is not required.

2.10 The Council notes that the application here includes a request for a Physical and Environmental (P&E) Constraints Review Permit because the proposal includes development on both floodplain corridor lands and severe constraints lands, and also requests Exception from the associated Development Standards. A geotechnical report prepared by the Galli Group Geotechnical Consulting has been provided. This report explains that in Galli’s professional opinion, other than the potential flooding from an upstream dam failure or the unlikely chance of site liquefaction during a seismic event, there are no existing on site or nearby slopes or other geologic hazards that will potentially cause damage at the site. Galli notes that a final geotechnical report will further verify the liquefaction susceptibility of the project site and provide liquefaction mitigation design recommendations where necessary. These will likely consist of accomplishing subsurface improvements such as amending (lime or cement treatment) or removing and replacing all liquefiable soils or providing deep foundation support (piers or piles) for structures, which would transfer structural loads through the soft/liquefiable soils zones and into the underlying very dense soils/weathered bedrock. This final report will be provided prior to final design and construction of the project, and include final geotechnical design recommendations for site preparation, structural fill and earthwork and grading operations (including cuts and fills), fill on steep slopes, building pad preparation, footing design, lateral load resistance for retaining walls, seismic design parameters, and structure/site drainage and erosion control. The geotechnical report here concludes that, “... *this parcel and the surrounding area is considered to be stable for the construction of the proposed project... The re-grading of the site for the proposed mixed-use development, when constructed properly and in accordance with the final geotechnical, structural and civil design plans and specifications for the project, will not adversely impact the general slope stability of this or adjacent parcels. Proper erosion control measures, grading techniques (fill removal, cut and fill slope construction, fill placement and compaction, and fill-on-slope and retaining wall construction) and proper surface water control on all parts of the site will assure that the overall stability of this or adjacent parcels is not compromised. Therefore, in our professional opinion, the construction of the proposed Magnolia Terrace mixed use development on this parcel will not adversely impact the slope stability of this or adjacent parcels and will maintain public safety in the immediate area.*”

Based on the project geotechnical engineer's report, the City Council finds that the potential impacts to the property and nearby areas have been considered and that adverse impacts will be minimized through the final design and construction. The Council further finds that the applicant has considered the potential hazards and will implement measures to mitigate them. The Council concludes that the has taken all reasonable steps to reduce the adverse impact on the environment.

2.11 The Council notes that the application includes a request for Exception to the Development Standards for Hillside Lands. The application materials suggest that when the Hillside Ordinance was originally adopted, there was no discussion of it applying to commercial or employment zoned lands. The applicant further asserts that applying largely *residential* standards to a *commercial* development presents unique unusual and difficulties and notes that Exceptions to a number of the Development Standards for Hillside Lands are necessary including those for buildable area, retention in a natural state, grading and cuts, and the building location and design standards in order to comply with commercial development standards. The applicant further explains that because the site is zoned Employment but has a narrow band of steep slopes in the middle of the site, in order to develop the site in keeping with the standards for Basic Site Review, Detail Site Review, Additional Standards for Large Scale Projects and Historic District Development, encroachment into the steeply sloped area is necessary.

The Council finds that the development standards for hillside lands were not originally envisioned in terms of commercial development, and the building design standards found in AMC 18.3.10.090.E were specifically noted as not being applicable in historic districts as historic design compatibility was seen as taking precedence. The Council further finds that the 2017 application for 165 Water Street impacted these same slopes with a ten- to 12-foot retaining wall, and requested Exception to the Development Standards for Hillside Lands to allow a cut slope in excess of seven feet without terracing. At that time, the Planning Commission recognized that the site was *"relatively unique in being E-1 zoned, outside of the Hillside Lands overlay, with a limited area of Severe Constraints Lands near the rear of the property, and with developable E-1 land both above and below the slope which are to be protected from slope failure with structural retaining to enable development typical of E-1 lands and their associated development and design standards."* The Council finds that while the current application now includes development both above and below these slopes, the 2017 findings remain applicable here. The Council concludes that the site's physical constraints are relatively unique for a commercially-zoned site within an historic district and, in light of the geotechnical report's assurances, the requested exception is merited.

2.12 The City Council notes that the application materials include a Tree Protection & Removal Plan (**Sheet L0.2**) which identifies 20 trees on the three subject properties and within the adjacent rights-of-way and proposes to remove them all. The written findings provided explain that:

"The site is proposed to be fully redeveloped with commercial structures and required parking areas. The amount of site work required to achieve the level of development required in the commercial zone, often necessitates the removal trees

that are within the buildable areas of the property. The trees are proposed for removal to permit the applicant to be consistent with other applicable ordinance requirements and standards applicable to the Site Design Standards and the Physical and Environmental Constraints ordinance."

The application materials go on to explain that mitigation trees are proposed throughout the property, with 27 trees proposed to be planted within the parking lot and open space areas, and another 16 new street trees to be planted in the adjacent rights-of-way, to more than mitigate the removals requested. The Tree Commission reviewed the application at its regular meeting on March 3, 2022 and unanimously recommended that the application be approved as submitted.

The City Council finds that the removals requested are in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards to develop this E-1 property in keeping with its zoning designation, and that the request satisfies the applicable criteria for Tree Removal. The Council concludes that with the mitigation proposed, the project results in a net gain for the property in terms of trees.

SECTION 3. DECISION

3.1 The application before the Council is an appeal on the record of the Planning Commission's denial of a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 165 Water St., 160 Helman St. and 95 Van Ness Av. The applicant's original proposal includes a request for Site Design Review approval for five mixed-use commercial buildings, as well as associated surface parking, utility infrastructure and street improvements, as the first phase of developing the properties. The three remaining lots would have initial site work completed with the first phase, but building construction for the second phase would occur only after Site Design Review approvals are obtained for the three remaining buildings. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; and a request for a Tree Removal Permit to remove 20 trees from the three properties and within the adjacent rights-of-way.

The appeal identified four grounds for the Council's consideration: 1) That the staff report was not received seven days prior to the hearing; 2) That staff presented new information during the public hearing; 3) That a member of the Historic Commission had *ex-parte* contact with a member of the public outside of the public hearing; and 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas was misapplied by the Planning Commission. In considering the appeal request, the City Council rejects the first three grounds for appeal, which were also waived by the applicant during the appeal hearing. However, with regard to the fourth ground for appeal (*That the standard in AMC 18.4.2.050.B.1 addressing 'Transitional Areas' was misapplied by the Planning Commission*) the Council finds that the Planning Commission did err in identifying specific means by which the application could be modified to meet the 'Transitional Areas' standard but subsequently denying the application rather than exercising its power to amend plans from AMC

18.5.2.080.G to approve the application subject to the conditions identified. On that basis, the Council supports the appeal on the fourth ground, reverses the Planning Commission's denial, and approves the application subject to conditions previously identified in the staff reports presented to the Planning Commission and new conditions incorporating design modifications previously identified by the Planning Commission as means to achieve compliance with the Historic District Development Standards, including the Transitional Areas standard. These conditions were agreed to by the applicant/appellant during the appeal hearing.

The subject property here is a complex one given its location within the Employment zone and the Detail Site Review and Historic overlay zones. It is subject to a high level of urban design review, but is also located partly within Ashland Creek's floodplain corridor lands and contains areas that are considered to be severely constrained by their steep slopes. In addition, the property is located at the outer edge of the Ashland Skidmore Academy Historic District in a transitional area where there are five zoning districts (R-2, R-3, E-1, C-1 and M-1) in the vicinity. Development of the site must balance all of these elements while addressing sometimes contradictory standards, and in the final analysis, the Council finds that with the conditions below an appropriate balance can be achieved.

Therefore, based on our overall conclusions, the City Council supports PA-APPEAL-2022-00015 only on the fourth ground for appeal, reverses the Planning Commission's denial, and approves PA-T2-2022-00037 with the conditions listed below.

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.
- 2) That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in conformance with those approved as part of this application, an application to modify this Site Design Review approval shall be submitted and approved prior to the issuance of a building permit.
- 3) That prior to the installation of any signage, a sign permit shall be obtained. All signage shall meet the requirements of the Sign Ordinance (AMC 18.4.7).
- 4) That all requirements of the Fire Department shall be satisfactorily addressed, including approved addressing (OFC 505); commercial fire apparatus access including angle of approach and any necessary fire apparatus or shared access easements (OFC 503.2.8); limitations on the installation of gates or fences; fire flow (OFC Appendix B, Table B105.1); fire hydrant clearance; fire department connection (FDC); a Knox key box; and fire sprinklers where required for mixed-use buildings or due to access constraints.
- 5) That a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.
- 6) That mechanical equipment shall be screened from view from surrounding rights-of-way, and the location and screening of all mechanical equipment shall be detailed on the building

permit submittals.

- 7) That the front entrances of ground floor commercial spaces adjacent to Van Ness Av., Helman St. and Water St. shall remain functional and open to the public during all business hours, and the windows on the ground floor, including those adjacent to public plaza spaces, shall not be tinted so as to prevent views into the interior of the commercial spaces.
- 8) That all measures installed for the purposes of long-term erosion control, including but not limited to vegetative cover, rock walls, retaining walls and landscaping shall be maintained in perpetuity on all severe constraints lands.
- 9) That prior to the installation of stairs, parking, or utility infrastructure within the public alley right-of-way, an encroachment permit from the Ashland Public Works Department shall be obtained. Stairs, transformers, and any other improvements within the alley right-of-way shall be located so as to accommodate and not interfere with any neighbor's already approved circulation plan. A final revised site plan illustrating the placement of these proposed improvements shall be provide for the review and approval of the Public Works/Engineering Department and Staff Advisor prior to the issuance of an encroachment permit.
- 10) If necessary to accommodate or align required street frontage improvements, the area for required street improvements shall be dedicated as public street right-of-way or a public pedestrian access easement provided as deemed appropriate by the Engineering Division and Staff Advisor. The right-of-way dedication or easement shall be submitted for review and approval of the Planning and Engineering Divisions prior to signature of the final survey plat.
- 11) That prior to the submittal of a final survey plat for review and signature:
 - a. All easements including but not limited to public and private utilities and irrigation, public pedestrian access, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.
 - b. The applicant shall provide evidence that the replacement of existing irrigation lines has been planned in coordination with the Talent Irrigation District, Watermaster and/or the ditch users' association, and any necessary easements to accommodate the relocation shall be detailed on the final survey plat.
 - c. Final stormwater drainage, grading, erosion and sediment control plans shall be provided for the review and approval of the Engineering, Building and Planning Departments. The stormwater plan shall address Public Works/Engineering standards requiring that post-development peak flows not exceed pre-development levels. Any necessary drainage improvements to address the site's stormwater shall be provided at the applicants' expense. Storm water from all new impervious surfaces and run-off associated with peak rainfall events must be collected on site and channeled to the city storm water collection system (*i.e., curb gutter at public street, public storm pipe or public drainage way*) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.
 - d. A final utility plan for the project shall be provided for the review and approval of the Engineering, Planning and Building Divisions. The utility plan shall include the

location of any necessary connections to public facilities in and adjacent to the development, including the locations of water lines and meter sizes, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. Meters, cabinets, vaults and Fire Department Connections shall be located outside of pedestrian corridors and in areas least visible from streets, sidewalks and pedestrian areas, while considering access needs. Any necessary service extensions or upgrades shall be completed by the applicant at applicant's expense, and the applicants shall obtain all necessary permits and inspections from the Public Works/Engineering Department for work to be completed within the public rights-of-way.

- e. An electric design and distribution plan including load calculations and locations of all primary and secondary services including any transformers, cabinets and all other necessary equipment shall be provided for the review and approval of the Electric, Engineering, Building and Planning Departments prior to the issuance of excavation or building permits. Transformers, cabinets and vaults shall be located outside the pedestrian corridor in areas least visible from streets, sidewalks and pedestrian areas, while considering the access needs of the Electric Department. Any necessary service extensions or upgrades shall be completed at the applicant's expense.
- f. That the engineered construction drawings for the public sidewalk along Water Street shall be submitted for review and approval of the Ashland Planning and Engineering Divisions prior to work in the street right-of-way and prior to installation of improvements in the pedestrian corridor. The sidewalk shall be a minimum of eight feet in width with five-foot hardscape parkrows with irrigated street trees in five-foot by five-foot tree grates the sidewalk and the curb. All frontage improvements, including but not limited to the sidewalk, street trees, and street lighting, shall be constructed across the entire Water Street frontage of the site. The sidewalk shall be constructed to City of Ashland Street Standards, and shall be installed in *San Diego Buff* color as required in the historic districts.
- g. That the engineered construction drawings for the public sidewalk along Van Ness Avenue shall be submitted for review and approval of the Ashland Planning and Engineering Divisions prior to work in the street right-of-way and prior to installation of improvements in the pedestrian corridor. The sidewalk shall be a minimum of six-feet in width where bays are proposed and shall be installed according to the configuration approved herein. All frontage improvements, including but not limited to the sidewalk, parking bays, street trees in bump-outs, and street lighting, shall be constructed across the entire Van Ness Avenue frontage of the site. The sidewalk shall be constructed to City of Ashland Street Standards, and shall be installed in *San Diego Buff* color as required in the historic districts.
- h. That engineered construction drawings for the public sidewalk along Helman Street shall be submitted for review and approval of the Ashland Planning and Engineering Divisions prior to work in the street right-of-way and prior to installation of improvements in the pedestrian corridor for any modifications of the Helman Street pedestrian corridor. At a minimum, the existing sidewalks and

parkrow configuration on Helman Street shall be maintained, and new street trees with irrigation shall be planted in the parkrow across the entire Helman Street frontage of the site. Any newly constructed sidewalk within the historic districts shall be installed in *San Diego Buff* color as required in the historic districts.

- i. That the tract of land shall be surveyed and the final survey plat shall be submitted to the city for review and signature within 18 months of the final decision date of the preliminary partition plat.

12) That prior to the signature of the final survey plat:

- a. That street trees, one per 30 feet of street frontage, shall be installed on the Helman, Van Ness and Water Street frontages prior to final building inspection approval or the issuance of a certificate of occupancy. All street trees shall be chosen from the adopted Street Tree List and shall be installed in accordance with the specifications noted in Section E of the Site Design and Use Standards. The street trees shall be irrigated.
- b. All utility service and equipment installations shall be completed according to Electric, Public Works/Engineering, Planning, and Building Departments' specifications, inspected and approved by the Staff Advisor.
- c. Sanitary sewer laterals, water services including connection with meters at the street, and underground electric services shall be installed according to the approved plans to serve all units.
- d. That all public improvements including but not limited to the street frontage improvements, alley, sidewalk, street trees, and street lighting shall be installed to City of Ashland standards under permit from the Public Works Department and in accordance with the approved plan.
- e. That common area and open space improvements be installed or bonded for in accordance with the procedures in the Subdivision chapter prior to signature of Final Survey Plat.
- f. That the CC&Rs or a similar maintenance agreement shall be provided for the review and approval of the Staff Advisor prior to signature of the final survey plat. This agreement shall describe the responsibility for the maintenance of all common use-improvements including landscaping, parking areas, driveways, planting strips and street trees. The CC&Rs or maintenance agreements shall state that deviations from the approved plan shall be considered a violation of the Planning Application approval and therefore subject to penalties described in the Ashland Municipal Code.

13) That building permit submittals shall include:

- a) The identification of all easements, including but not limited to public or private utility, drainage, access or parking easements, fire apparatus access easements, and public pedestrian access easements.
- b) The identification of exterior building materials and paint colors for the review and approval of the Staff Advisor. Colors and materials shall be consistent with those approved in the application, and very bright or neon paint colors shall not be used.

- c) Specifications for all exterior lighting fixtures. Exterior lighting shall be selected, placed and directed on the property to avoid directly illuminating adjacent properties.
- d) Final revised Site, Landscape and Irrigation plans shall be provided for the review and approval of the Staff Advisor with the building permit submittals. These revised plans shall address: 1) a final size- and species-specific planting and irrigation plan, including the requirements for programmable automatic timer controllers and a maintenance watering schedule with seasonal modifications; 2) final lot coverage and required landscaped area calculations, including all building footprints, driveways, parking, and circulation areas, and landscaped areas. Lot coverage shall be limited to no more than 85 percent, and the calculations shall demonstrate that the requisite 15 percent landscaping and seven percent parking lot landscaping are provided;
- e) Identification and placement of required bicycle parking. Inverted u-racks shall be used for the outdoor bicycle parking, and all bicycle parking shall be installed in accordance with the standards in 18.4.3.070.I, inspected and approved prior to the issuance of the certificate of occupancy. The building permit submittals shall verify that the bicycle parking spacing and coverage requirements are met.
- f) A final geotechnical report which includes final geotechnical design recommendations for site preparation, structural fill and earthwork and grading operations (including cuts and fills), fill on steep slopes, building pad preparation, footing design, lateral load resistance for retaining walls, seismic design parameters, and structure/site drainage and erosion control. This report shall also include a detailed inspection schedule listing the inspections necessary to verify compliance with the geotechnical recommendations for the project.
- g) Retaining walls and building foundations to be constructed on severe constraints lands shall be designed by an engineer or architect with demonstrable geotechnical design experience, and written verification from the project geotechnical expert addressing the consistency of the building permit submittals with the geotechnical report recommendations (e.g. grading plan, storm drainage plan, erosion control plan, etc.) shall be provided with the building permit submittals.
- h) Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard B in the formula $[(\text{Height} - 16)/(0.445 + \text{Slope}) = \text{Required Solar Setback}]$ and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
- i) Revised design drawings to address the conditions imposed by the Council here, including: 1) That the design of the southernmost building (#4) shall be modified to step back the third story at least six feet from the second story façade; 2) That the middle building (#3) shall be set back at least six feet from the sidewalk, and this additional setback area between the face of the building and the street shall be

improved as plaza space, and the final building design shall be modified to step back the third story at least six feet from the second story façade; 3) That the three buildings facing Helman Street shall have wall plate heights on their residential floors (i.e. the second and third stories) no greater than ten (10) feet to provide for nine (9) foot floor-to-ceiling heights which are unobstructed by mechanical ducting or plumbing installation; 4) That the final building designs shall incorporate the material changes previously presented to the Planning Commission for its April 2022 hearing.

- 14) That prior to the issuance of the building permit, the commencement of site work including staging or the storage of materials:
 - a) A Tree Verification Permit shall be obtained. Trees to be removed shall be tagged and tree protection measures installed according to the approved plan, inspected and approved by Staff Advisor. The Verification Permit is to verify tree identification prior to removal and to inspect the installation of tree protection fencing for the trees to be retained and protected. Tree protection measures shall be in the form of chain link fencing six feet tall, installed and maintained in accordance with the requirements of AMC 18.4.5.030.C.
 - b) That all necessary building permits fees and associated charges, including permits and connections fees for new, separate, underground electrical services to each proposed unit, and system development charges for water, sewer, storm water, parks, and transportation shall be paid.
- 15) That prior to the final approval of the project or issuance of a certificate of occupancy:
 - a) That all hardscaping and landscaping improvements including plaza spaces, landscaping, and the irrigation system shall be installed according to the approved plan, inspected, and approved by the Staff Advisor. Replacement trees to mitigate the trees removed shall be planted and irrigated according to the approved plan.
 - b) That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent residential properties.
 - c) Screening for the trash and recycling enclosure shall be installed in accordance with the Site Design and Use Standards, and an opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure as required in AMC 18.4.4.040.
 - e) That the project geotechnical expert shall inspect the site according to the inspection schedule, and prior to final building inspection approval or the issuance of the certificate of occupancy, the geotechnical expert shall provide a final report indicating that the approved grading, drainage and erosion control measures were installed as per the approved plans, and that all scheduled inspections were conducted by the project geotechnical expert periodically throughout the project.
 - f) That inverted u-racks shall be used for the bicycle parking. All bicycle parking shall be installed in accordance with design and rack standards in 18.4.3.070.I and J prior to final building inspection approval or the issuance of the certificate of occupancy.

The building permit submittals shall verify that the bicycle parking spacing and coverage requirements are met in accordance with 18.4.3.070.I.

- 16) That new driveway approaches shall be permitted through the Engineering Division and are required to be separated from existing driveways and each other by a minimum of 24-feet per City Street Standards. The driveway curb cuts shall be installed, inspected and approved, and any old/unused approaches removed, prior to final building inspection approval or the issuance of a final certificate of occupancy.
- 17) That the buildings included in the second phase are not approved here and shall require separate Site Design Review approval prior to the commencement of Phase II.

Ashland City Council Approval

February 7, 2023

Date

Council Business Meeting

February 7, 2023

Agenda Item	City Council Election or Process to fill Mayor Vacancy	
From	Melissa Huhtala	City Recorder
Contact	Mellissa.huhtala@ashland.or.us ; 541-522-2084	

SUMMARY

On January 23rd, Mayor Akins resigned from the Ashland City Council effective January 27th, 2023.

This item it for the City Council to consider how it wishes to proceed to appoint (elect) a replacement to fill the Mayor's positions. The Council must appoint a replacement by end of day March 27th (within 60 days of the effective dates of the resignation; see Article III, Section 4 of the City Charter below under Policies, Plans & Goals Supported). City Council appointments/elections to fill a vacant Elected Officer are for a term that expires upon election of a successor by public vote at the next biennial election; in this case the appointed term would expire December 31, 2024.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

The selection and appointment (election) of replacement Elective Officials is at the City Council's discretion. It may either directly nominate candidates and select the replacement or establish a process by which it will solicit and consider potential candidates for the vacant position.

The following information is provided/referenced by the League of Oregon Cities on how other cities fill vacant City Council positions:

- City of Corvallis: Must full a vacancy within sixty (60) days; City Manager conducts outreach to invited/solicit nominations from the vacant position's ward; City Manager schedules public interviews and public hearing regarding the nominees; appointment is made by majority vote of the City Council. A Mayor's vacancy must be filled by a special election if there is 120 days or more remaining in the vacated position's term of office, and the special election must be within sixty (60) days of the vacancy; if less than 120 days remain in the vacated Mayor's term of office the position is filled by the candidate receiving the most votes in the next regular election.
- City of Hood River: City Manager advertises for applicants and City Recorder verifies qualifications; Council directs City Manager to set date and time for interviews with all candidates; Mayor and Council vote for one candidate each with the two highest vote count candidates being nominees for a final written ballot; Majority vote on the final/tie breaking ballots fills the vacancy.
- City of Medford: Applications must be in writing with a nominating petition of twenty-five (25) electors/voters from the vacant position's ward; City Council may repeat nomination process if dissatisfied with the field of applicants; selection requires an interview panel of five citizens from the vacant position's ward to make recommendations to the City Council; the citizen panel may be suspended if the vacancy occurs within 120 days prior to an election; the selection process must begin within forty-five (45) days and not be unreasonably delayed.

- City of North Bend: Vacancies are filled by a majority vote of the City Council; City Council, at its sole discretion, determines the manner by which it will fill a vacancy.
- City of Sherwood: City Council must fill a vacancy within forty-five (45) days; an election is required to fill a vacancy if there is more than thirteen (13) months remaining in the term of office for the vacated position.

The City Council also has a vacant City Councilor position (Position #3) and determined at its January 31, 2023 Business Meeting to use the following process and schedule to solicit applicants for the position and make an appointment. This process has previously been used by the City to fill vacant Elected Official vacancies:

1. City Recorder advertises for applications
2. Applications are due by 5:00 p.m. on **Feb. 14th**
3. City Recorder forwards all applications to Council upon deadline closing
4. Interviews of applicants by Councilors will be completed by **Feb. 20th**
 - Staff will coordinate interview scheduling between each applicant and Councilors
5. Appointment by the City Council will be at one of the following meetings (within the sixty (60) appoint/elect deadline):
 - **Feb. 21st** at the regular City Council Business meeting, or
 - **Feb. 22nd** at a Special Called Business Meeting on

STAFF RECOMMENDATION

N/A

FISCAL IMPACTS

N/A

POLICIES, PLANS & GOALS SUPPORTED

City Charter Article III – Elective Officers, Section 4 – Vacancies specifies the City Council has sixty (60) days from an effective resignation date to fill a vacated Elected Officer position:

Section 4. Vacancies An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony; other offense pertaining to his/her office, or unlawful destruction of public records; resignation; recall from office or ceasing to possess the qualifications for the office; or, in the case of the Mayor or Council Member, upon his/her absence from the City for thirty (30) days without the consent of the Council or upon his/her absence from meetings of the Council for sixty (60) days without like consent, and subsequent declaration of the vacancy by a two-thirds affirmative vote of the Council.

A vacant elective office in the City shall be filled within sixty (60) days by the Council electing some qualified person to fill such vacancy. The appointee's term of office shall begin immediately upon appointment and shall continue until a successor, elected at the next biennial election, takes office for the unexpired term. The Council shall have the power, by a two-thirds affirmative vote, to expel any member of the Council for disorderly conduct in Council or inattention to duties. No Council member shall be expelled without notice and a hearing by the Council.

BACKGROUND AND ADDITIONAL INFORMATION

The appointment (election) of replacement Elective Officials is at the City Council's discretion. It may either directly nominate candidates and select the replacement by majority vote of the Council or establish a process by which it will solicit and consider potential candidates for the vacant position.

Should the City Council wish to use a selection process similar to that outlined above for the Councilor #3 vacancy, the following process and schedule may be appropriate:

1. City Recorder advertises for applications for 17-24 days
2. Applications would be due by 5:00 p.m. on **Feb. 24th** or **Mar. 3rd** respectively; City Recorder forwards all applications to Council upon deadline closing
3. Interviews of applicants by Councilors would be completed within ten (10) days, by **Mar. 6th** or **Mar. 13th** depending on the respective application deadline
4. Appointment by the City Council will be at one of the following meetings respectively (within the sixty day appointment deadline):
 - **Mar. 7th** at the regular City Council Business meeting, or
 - **Mar. 14th** at the regular City Council Business meeting

Historically, City Council applications require submittal of a letter of interest, resume and responses to the following questions:

- What are the biggest issues facing the City?
- What is your primary motivation for seeking a vacant Elected Official position/seat?
- What Community and City activities have you been involved in recently?
- What is the role of the City Councilor?

REFERENCES & ATTACHMENTS

None

Council Business Meeting

February 7, 2023

Agenda Item	Authorization to apply for an ODOE CREP Planning Grant	
From	Tom McBartlett Sabrina Cotta	Director of Electric Deputy City Manager
Contact	Thomas.mcbartlett@ashland.or.us Sabrina.cotta@ashland.or.us	541-488-5357 541-488-6002

SUMMARY

Staff is seeking Council approval to submit an application to the Oregon Department of Energy (ODOE) for a Community Renewable Energy Planning Grant

POLICIES, PLANS & GOALS SUPPORTED

Ashland Climate and Energy Action Plan, strategy BE-1, support cleaned energy sources

PREVIOUS COUNCIL ACTION

N/A

BACKGROUND AND ADDITIONAL INFORMATION

If awarded the grant would be used to identify potential locations for a community solar project up to 1MW in size. Locations would need to be evaluated for solar efficiency, load analysis, code compliance, interconnection studies, and any other identified components for a successful installation.

FISCAL IMPACTS

The available planning grants are 100% grant funds up to \$100,000.

STAFF RECOMMENDATION

Staff recommends that Council authorize staff to move forward with this grant application.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to authorize staff to submit an application to ODOE for a CREP planning grant.

REFERENCES & ATTACHMENTS

Opportunity Announcement for the Community Renewable Energy Grant Program



Opportunity Announcement for the Community Renewable Energy Grant Program

Opportunity Announcement #22-016

Grant dollars to support planning activities for a community renewable energy project that does not qualify as a community energy resilience project.

Contact

Address: Oregon Department of Energy
550 Capitol St NE, 1st Floor
Salem, OR 97301

Email: community.grants@energy.oregon.gov

Schedule

Event	Date
Opportunity Announcement Published	December 28, 2022
Opening of Opportunity Period	January 3, 2023
Questions Due	January 27, 2023
Final Questions and Answers Posted	February 3, 2023
Closing of Opportunity Period & Applications Due	February 15, 2023
Eligibility and Completeness Review (approximate)	March 6, 2023
Competitive Review (approximate)	April 14, 2023
Award Notification (approximate)	May 8, 2023

Contents

Section 1: Purpose and General Information	3
1.1 Introduction	3
1.2 Objectives	3
1.3 Grant availability	3
1.4 Eligibility	3
Section 2: Application Requirements & Process	5
2.1 Submission of Applications	5
2.2 Other Incentives or Grants	7
2.3 Questions	8
Section 3: Review Process	8
3.1 Overview of Review Process	8
3.2 Eligibility and Completeness Review	8
3.3 Competitive Review	9
3.4 Offer of Performance Agreement	10
Section 4: Grant Process and Payment	11
4.1 Reporting	11
4.2 Amendments	11
4.3 Disbursing Grant Award	12
4.4 Inspection & Audit	12
Section 5: Additional Information	12
5.1 Public Information, Confidentiality	12
5.3 No Obligation	13
5.4 Sunset Information	13

Section 1: Purpose and General Information

1.1 Introduction

The purpose of this Community Renewable Energy Grant Program opportunity announcement is to create an application, competitive review, and grant award process that follows the requirements of the legislation and rules under which the Community Renewable Energy Grant Program is administered to determine which projects will receive grant funding.

1.2 Objectives

The Community Renewable Energy Grant Program provides grants to:

- Support offsetting the cost of planning and developing community renewable energy projects;
- Make community renewable energy projects economically feasible for qualifying communities;
- Promote small-scale renewable energy projects; and
- Provide direct benefits to communities across this state in the form of increased community energy resilience, local jobs, economic development, or direct energy cost savings to families and small businesses.

This opportunity announcement aims to support planning activities for a community renewable energy project that does not qualify as a community energy resilience project.

1.3 Grant availability

The Department has \$12,000,000 in grant funds available for four open Community Renewable Energy Grant Program opportunity announcements. A minimum of 50 percent of these funds are reserved for projects that qualify as a community energy resilience project, and a minimum of 50 percent is reserved for community renewable energy projects that primarily serve a qualifying community. A minimum of \$1,000,000 is reserved for planning projects that qualify as a community energy resilience project and a minimum of \$1,000,000 is reserved for planning projects that do not qualify as a community energy resilience project. Qualifying communities include communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

The maximum grant available for planning a community renewable energy project, whether it qualifies as a community energy resilience project or not, is \$100,000 and it may be used to cover up to 100 percent of the reasonable planning costs.

1.4 Eligibility

An applicant must be one of Oregon's federally recognized Indian Tribes, a public body, or a consumer-owned utility. See [ORS 174.109 for a definition of "public body" and HB 2021 Section 29 \(2021\) for definitions of "public body" and "consumer-owned utility"](#). An applicant may

partner with another entity, or entities, including another entity that would qualify as an applicant, a Federal agency, nonprofit entity, private business located in Oregon, or owner of rental property in Oregon.

Eligible community renewable energy projects must utilize one or more of the following renewable energy system technologies:

- Energy generation:
 - Biomass
 - Solar
 - Geothermal
 - Hydroelectric
 - Wind
 - Landfill gas
 - Biogas
 - Wave
 - Tidal
 - Ocean thermal energy technology
- Energy storage
- Microgrid technologies
- Electric vehicle charging

A new energy storage system, microgrid technology, or electric vehicle charging station must be paired with an existing or newly-constructed renewable energy system for producing energy, as listed above

Other eligibility requirements for a planning grant include:

- The proposed project must be located in Oregon but not in a city with a population of 500,000 or more.
- The project must provide a direct benefit to an Oregon community in the form of increased community energy resilience, local jobs, economic development, or direct energy costs savings to families and small businesses.
- The project must not exceed 20 MW of nameplate capacity, if the project is for generating renewable energy.
- The applicant must meet all the application requirements detailed in Sections 1 and 2 of this opportunity announcement.

Costs eligible to be covered by a Community Renewable Energy Grant planning grant are detailed in [OAR 330-250-0050](#).

Section 2: Application Requirements & Process

2.1 Submission of Applications

Applications must be submitted through the Department's [online application portal](#) with all the requested information. Access to the application portal and associated materials are available on the [Oregon Department of Energy website](#).

Applications that are submitted improperly or are incomplete may be rejected. The Department must receive applications no later than the due date on the cover of this opportunity announcement.

On the application form, the applicant must list a person as the point of contact for the application. The Department will contact this designated responsible party with technical questions; it is the job of the designated point of contact to coordinate and submit responses to the Department.

A complete planning grant application includes, at a minimum:

- (1) An application form with all required information completed.
- (2) Applicant eligibility information and contact details.
- (3) Information about any partner organizations and their roles, including:
 - (a) For any partner that is a private business, documentation that the partner has a business site in Oregon.
 - (b) For any partner that is an owner of rental property, documentation that the partner owns rental property in Oregon.
- (4) A description of consultation with stakeholders including:
 - (a) Evidence the application has been drafted in consultation with regional stakeholders for the purpose of ensuring feasibility. This must include a description of the applicant's consultation with regional stakeholders and community groups, and any additional community engagement process as part of developing the planning grant application.
 - (b) Evidence the application has been drafted in consultation with electric utilities that have customers in the communities covered by the proposed community renewable energy project, for the purpose of ensuring feasibility. This may include a letter from the electric utility serving the communities covered by a proposed community renewable energy project or other evidence that the applicant has consulted the electric utility.
- (5) A description of the proposed project including:

- (a) A description of the project location including details of its location in Oregon and not in a city with a population of 500,000 or more.
- (b) If applicable, a detailed description or other documentation of the extent to which the community renewable energy project would be located in and/or will serve one or more qualifying communities.
- (c) A description that shows the system meets the definition of a community renewable energy system. This should include:
 - (A) Information regarding major system components, to the extent known, such as renewable energy generation, energy storage, electric vehicle charging systems, and microgrid enabling technologies.
 - (B) A description of the renewable energy resource, that the resource is in adequate supply, and how the system will access the resource.
 - (C) A description of the market for the energy produced by the system.
 - (D) A description of how the system will connect or transmit energy to the community identified in the application.
- (d) If the project is for generating renewable energy, the anticipated nameplate capacity if known.
- (e) If the project is for energy storage, the anticipated nameplate capacity in kW of the proposed energy storage system if known.
- (f) If the community renewable energy project will add capacity to or be paired with an existing renewable energy system, for example pairing energy storage and/or microgrid enabling technologies with an existing solar photovoltaic array, the applicant must include a description of the existing renewable energy system.
- (6) A project plan that contains:
 - (a) A list of planning team members, their roles and lines of authority, and experience with similar projects.
 - (b) A detailed schedule for planning completion, which demonstrates the planning will be completed within six months of execution of the performance agreement.
 - (c) Evidence that demonstrates the planning will result in a proposal for developing a community renewable energy project.
 - (d) A description of how consultation with the following groups will be incorporated into the planning:

- (A) Members of qualifying communities served by the proposed community renewable energy project;
 - (B) Businesses located in the communities served by the proposed community renewable energy project;
 - (C) Electric utilities that have customers in the communities served by the proposed community renewable energy project; and
 - (D) Other regional stakeholders.
- (7) If applicable, a description of how the community renewable energy project would integrate with broader community energy and environmental goals.
- (8) The grant amount requested and estimated budget for planning costs, including:
- (a) Costs associated with:
 - (A) Consulting fees, including design and engineering;
 - (B) Load analysis;
 - (C) Siting, excluding property acquisition;
 - (D) Ensuring code compliance;
 - (E) Interconnection studies;
 - (F) Transmission studies; and
 - (G) Other expenditures, summarized by purpose.
 - (b) A description of any other grants that the applicant has been or may be awarded for the planning in the application, including the amount and source of the grant funds.
- (9) The following supplemental documents:
- (a) Written authorization from the applicant's governing body allowing submission of the application.
 - (b) For any partner that is a public body, written authorization from the partner's governing body allowing submission of the application.

The department will not accept amendments to applications during the opportunity period. An applicant may withdraw an application and submit a replacement application during the opportunity period.

2.2 Other Incentives or Grants

In the application, an applicant must indicate other incentives that have been or may be awarded that are directly related to the planning in the application. The amount of any

potential CREP grant will be reduced if in combination with other incentives the amount exceeds 100 percent of the planning costs.

2.3 Questions

Questions, including requests for explanations of the meaning or interpretation of provisions of this opportunity announcement, must be submitted via email to community.grants@energy.oregon.gov and be received by the due date for questions set forth on the cover of this opportunity announcement. To help ensure questions are answered and responses are posted appropriately, please identify "CREP question" in your subject line. Answers to questions submitted will be posted online for access by all applicants.

Section 3: Review Process

3.1 Overview of Review Process

The Department will conduct a review of the applications received in response to this opportunity announcement. The Department will evaluate all applications for completeness. The Department will conduct a competitiveness review of all complete applications and based on the competitive review results; certain applications may be offered a performance agreement.

The only information the Department will consider in the review process is that which is submitted by the applicant through the application process. Attempts to improperly influence the review process by submitting additional information or contacting the agency review team with additional information will result in application denial. All comments and questions should be submitted via email to community.grants@energy.oregon.gov.

3.2 Eligibility and Completeness Review

The Department staff will first review all applications on a pass/fail basis to determine if each application is complete, meaning it includes all the minimum required elements described in section 2.1 of this opportunity announcement. This review may begin upon submission of an application. The applicant's failure to comply with the instructions or failure to submit a complete application may result in the application being found incomplete and rejected. Only those applications that meet the minimum requirements will be considered for further review. If the applicant is relying on information in attachments, the information in the attachments should be readily identifiable with explicit references noted on the application form.

If the Department finds that the application is complete, the Department will notify the applicant that the application will move into the competitive review process. The Department will not process incomplete applications, though the Department may request additional information from an applicant if necessary to support the competitive review process. The Department will provide written notification to applicants that submit incomplete applications that their application is not moving to the competitive review. If an application is found to be incomplete, the applicant may apply in a future opportunity announcement.

3.3 Competitive Review

The requested information detailed in Section 2.1 is the minimum required information for an application to be considered complete. Some of the scoring criteria in Section 3.3 are optional. Applicants that demonstrate they meet these criteria may score higher during the competitive review process. The online application portal will provide details on how to submit this information.

Planning Project – Community Renewable Energy Project Competitive Review Criteria		Points
Project Strength		
Strength of planning project team: applicant provides a list of significant planning team members, clearly defined roles, sufficient number of team members, experience of the team on similar projects, clear description of partners.	45	
Strength of renewable energy project description: applicant adequately describes the project to be planned.		
Strength of financial plan: applicant demonstrates financial ability to complete the planning.		
Strength of planning project schedule: applicant demonstrates the planning will be completed within 6 months.		
Program Priorities & Project Benefits		
Equity: • Location in Community: Proposed project is located in a qualifying community. • Communities Served: Proposed project provides direct benefits to one or more qualifying communities. • Project Leadership: Applicant provides a description of the consultations with regional stakeholders and community groups, and any additional community engagement process as part of developing the grant application. • Community Partnerships. Applicant demonstrates partnerships with regional stakeholders and community groups representing qualifying communities. • Community Outreach Plan: Applicant includes a community outreach plan that describes the participation and engagement by People of color, people experiencing lower incomes, members of tribal communities, people from rural communities, people from coastal communities, people from communities with limited infrastructure and members of other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and people with disabilities in the siting, planning, designing, or evaluating of the proposed project. This could include, but is not limited to, descriptions of surveys of the local community, attendance or participation at public meetings, community ideas and recommendations incorporated in project plan.	15	

An Equity Framework is used by the applicant to guide development, or is proposed to guide implementation or evaluation, of the project.	
Demonstrates significant prior investments in energy efficiency measures at the project location or will result in aggregate improvements to demand response capabilities. Evidence may include utility or Energy Trust of Oregon project documentation or finance statements demonstrating investments.	5
Project constructed in part or in whole by disadvantaged business enterprises, emerging small businesses, or businesses that are owned by minorities, women, or disabled veterans.	5
Applicant includes information detailing the extent to which the project includes inclusive hiring and promotion policies.	5
Project assists applicant in achieving goals included in the applicants' natural hazard mitigation plan as approved by the Federal Emergency Management Agency.	5
Level of anticipated direct energy cost savings to families and small businesses (amount of savings predicted relative to the grant request amount, number of families and businesses that see direct savings, diversity and types of families and businesses that see the direct benefits).	5
Level of anticipated economic development (beyond job creation, will the proposed project increase average incomes; ensure sustainable economic growth, innovation, workforce development, business retention and expansion, and promotion of an environment that supports entrepreneurship and small business development).	5
Level of anticipated local jobs directly created during planning for the project or during project construction, and directly sustained during operations, in relation to the size of the requested grant amount.	5
Project Diversity	
Geographic Diversity.	5
Diversity of technology/resource types/project size.	

Applications will be ranked based on the competitive review scores and recommendations from competitive review committee. Final recommendations will be determined by the department. Applicants that are recommended for awards may be offered a Performance Agreement.

The Department will notify applicants of the competitive review outcome in writing. Planning projects not selected may be eligible to apply again during a future opportunity announcement.

3.4 Offer of Performance Agreement

Following the competitive review, successful applications may be offered a performance agreement that contains the terms associated with the grant and the requirements for disbursement of grant funds. The grant amount offered in the performance agreement may be less than requested. The Department will communicate to the applicant the conditions surrounding the offer of a performance agreement. Applicants will have 30 calendar days to respond in writing to the offer, after which the Department may revoke the offer.

The performance agreement will include the terms provided in [OAR 330-250-0080](#), and may include additional terms, such as reporting frequency. In accordance with OAR 330-250-0080 (3), failure to agree to the terms of a performance agreement may result in the Department rejecting the grant application.

Section 4: Grant Process and Payment

4.1 Reporting

Once a Performance Agreement is executed, successful applicants will be required to submit planning progress reports as specified in the performance agreement.

When the planning project is complete, the grantee must submit a copy of the plan completed under the performance agreement and an itemized list of equipment and the incurred costs for items associated with the planning and detailed in the performance agreement.

Reasonable planning costs itemized may include, but are not limited to, costs associated with:

- (1) Consulting fees, including design and engineering;
- (2) Load analysis;
- (3) Siting, excluding property acquisition;
- (4) Ensuring code compliance;
- (5) Interconnection studies;
- (6) Transmission studies; and
- (7) Other expenditures, summarized by purpose.

The grant may not be used to cover any fixed costs the applicant would incur in the applicant's normal course of business such as existing staff salaries or overhead costs.

4.2 Amendments

Performance agreements may be amended only as provided under [OAR 330-250-0140](#). The grantee must submit a written amendment request to the director to amend a performance agreement. Prior to approval of an amendment, the grantee must demonstrate that the planning project with the proposed change will continue to meet the requirements in statute, rule, and the opportunity announcement, as well as continuing to be technically feasible. The grantee has the responsibility to provide complete technical documentation that will support a case for the proposed amendment. Department may accept or deny amendments in its sole discretion without justification or documentation.

The Department will evaluate amendments to determine if the change would have affected the outcome of the competitive review, which may result in pro-rating the award amount or denial of the amendment request. Amendment request will not result in an increased award amount, even if the project costs increase.

4.3 Disbursing Grant Award

Once a performance agreement is executed, up to 30 percent of the grant funds may be released to be spent on eligible planning costs. The remaining grant funds will be released upon completion of the planning and receipt of the reporting requirements.

If the requested grant is for planning a community renewable energy project and the grant amount is up to 100 percent of the planning costs associated with the project, the final distribution amount may be reduced based on the CPA verification letter required in the final report as specified in the Performance Agreement.

4.4 Inspection & Audit

The Department reserves the right to audit all documentation relating to the planning project in a performance agreement.

Section 5: Additional Information

5.1 Public Information, Confidentiality

The State of Oregon's Public Records Law (ORS 192.311 through 192.478) applies to filings and applications submitted to the Department. The law states every person has a right to inspect any public record of a public body, subject to certain exceptions. Applications are public records, and the Department may be required by law to disclose information in the application to the public on request. An applicant may request confidentiality of certain information in its application by marking the information confidential. Marking information does not guarantee that it will be kept confidential, however, and the Department will make any decisions regarding public disclosure of information contained in this application in accordance with Oregon Public Records Law.

Grant funding from the state of Oregon may be reported on [Oregon Transparency](#), a state agency tool available for Oregonians to learn about how state government works, taxes are used, and more. The data and information on this website are provided to users for general knowledge and information. It excludes data and information that is confidential, protected, or private under state and federal laws, and is unaudited.

The Department may publicly announce awarded grantees under this program. The public announcement may include but is not limited to: the system owner's name, partner's names, type of project and/or description, location of project, size of the project, total cost of the project, and the awarded grant amount.

5.2 Reservation of Department Rights

The Department reserves all rights regarding this opportunity announcement, including, without limitation, the right to:

1. Amend, delay, or cancel the opportunity announcement without liability if the Department finds it is in the best interest of the State of Oregon to do so;

2. Not consider any or all applications received upon finding that it is in the best interest of the State of Oregon to do so;
3. Deem incomplete any application that fails to comply with all prescribed opportunity announcement procedures and requirements; and
4. Allocate a grant amount less than the amount requested by applicant, at its discretion.

5.3 No Obligation

The Department is not obligated as a result of the submission or acceptance of an application to award a grant to an applicant.

5.4 Sunset Information

If awarded, a grant applicant's performance agreement will outline the timeframe required to receive the grant award. In general, CREP planning grant performance agreements provide six months from the date of the agreement for the applicant to complete the project. Extensions to the final completion period may be granted for a reasonable time frame at the sole discretion of the Department, but in any event only if good cause to extend the deadline is demonstrated.

Council Business Meeting

February 7, 2023

Agenda Item	Food and Tax Ordinance Amendment Ballot Measure Language for the May 16, 2023, Special Called Election	
From	Doug McGeary Joseph Lessard	City Attorney City Manager
Contact	doug.mcgeary@ashland.or.us ; 541-488-5350 joe.lessard@ashland.or.us ; 541-522-2103	

SUMMARY

Council has requested information regarding a potential item for the May 16th Special Called Election ballot to request voter approval of an amendment to the City's Food and Beverage Tax ordinance (AMC 4.34). The proposed amendment would dedicate 98% of Food and beverage tax revenues to uses currently under the City's Parks and Recreation Department. The amendment would also continue the use of 2% of revenues to tax cover tax administration costs. A vote by the citizens of Ashland is required to adopt changes to the use of Food and Beverage Tax revenues.

The current Food and Beverage Tax ordinance, adopted by Ashland votes, authorizes the tax revenues to be used for the following:

- Not less than 25% of the tax revenues will be used for parks acquisition, planning, development, repair, and rehabilitation expenses
- Up to 73% for street repair and rehabilitation debt
- Up to 2% for tax administration costs

For purposes of the City Council's discussion, the City Attorney has prepared draft ballot language that could be put forward for a vote of Ashland citizens that would dedicate 98% of Food and Beverage Tax revenues to uses currently under the City's Parks and Recreation Department (see attached Notice of Measure Election – Proposed Amendment to Ashland's Food and Beverage Tax Ordinance). The City Attorney has also prepared a corresponding draft Food and Beverage Tax ordinance amendment (see attached Draft AMC 4.34.020 Amendment) that would need to be adopted by the City Council prior to the May 16th Special Called Election.

The draft ballot language and AMC 4.34.020 ordinance amendment dedicate food and beverage tax revenues for uses for city parks, open space, recreation, and senior service purposes as follows:

- Not less than 25% of the tax revenues will be used for capital expenses, including acquisition, planning, development, repair, and rehabilitation
- Up to 73% of tax revenues will be used for operations, maintenance, and capital expenses
- Tax administration will continue to be 2% of revenues

The draft ordinance amendment does not change the current 5% rate or change the tax expiration date of Dec. 31, 2030.

To include a Food and Beverage Tax amendment on the May 16th Special Called Election ballot, the City Council will need to take the following steps:

1. Approve ballot measure language for a Food and Beverage Tax amendment and adopt a formal resolution submitting the ballot measure to the City of Ashland's Elections Officer (the City Recorder) for submittal to the Jackson County Elections Officer no later than Feb. 24th. Another item on the Feb. 7th Council agenda is a resolution to submit the ballot measure to the City Elections Offices. (Ballot measures may be challenged by Ashland citizens which may require an updated/final measure be submitted to the Jackson County Elections Official by March 16th. Also, ballot measures may be withdrawn by the City Council until March 16th.) Ballot language must be reviewed and approved for submittal by the City Attorney.
2. Adopt an ordinance that comports with the ballot measure submitted to the Jackson County Elections Officer. The usual ordinance adoption process for the AMC 4.34.020 amendment would be scheduled as follows:
 - Conduct a first reading of the proposed ordinance at the Feb. 21st City Council Business Meeting; and
 - Conduct a second reading of the proposed ordinance at the Feb. 22nd at the Special Called Business Meeting or on Mar. 7th at the regularly scheduled City Council Business Meeting.

FISCAL IMPACTS

The draft proposed amendment to AMC Chapter 4.34.020 will not alter the tax rate or level of revenues collected from the Food and Beverage Tax but will broaden its allocations to 98% for uses currently under the Parks and Recreation Department, including for operations, maintenance, and capital expenses. The proposed amendment would not increase the tax amount or change its expiration date of Dec. 31, 2030.

The City Recorder has been in contact with the Jackson County requesting a cost estimate for Ashland's share of Jackson County's Special Called Election should the City wish to add an Ashland ballot item. The County Clerk has indicated it is not possible to estimate the cost for Ashland but has informed the City Recorder that it will be a countywide election with several jurisdictions sharing the cost. Ashland will not be required to cover the full cost of an election. The best estimate of Ashland's share of election costs is \$5,000-\$15,000. The cost will be covered by expected Administration budget ending balances (City Council, City Manager, HR, Legal, Courts, etc.). Once the actual election cost is known, the actual cost amount will be transferred to the City Recorder's budget for expensing from Administration budgets.

STAFF RECOMMENDATION

City staff recommends adopting ballot language for an amendment to the Food and Beverage Tax to be included as a referendum measure on the May 16, 2023, Special Called Election ballot.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to approve the Food and Beverage Tax referendum ballot language dedicating 98% of Food and beverage tax revenues to uses currently under the City's Parks and Recreation Department for the May 16, 2023, Special Called Election and that it be referred to the City Elections Officer for submittal to the Jackson County Election Officer no later than Feb. 24th.

REFERENCES & ATTACHMENTS

Attachments:

1. Notice of Measure Election – Proposed Amendment to Ashland's Food and Beverage Tax Ordinance
2. Draft AMC 4.34.020 Amendment
3. PET 01 (Parks Commission Submitted Ballot Language)

Notice of Measure Election

City

SEL 802

rev 01/18 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

Notice

Date of Notice

Name of City or Cities

Date of Election

City of Ashland

May 16, 2023

Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Proposed amendment to Ashland's food and beverage tax ordinance.

Question 20 words which plainly phrases the chief purpose of the measure.

Shall the ordinance be amended to dedicate revenues to city parks, open space, recreation and senior service purposes?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

A "Yes" vote for this measure allows the City of Ashland to allocate the food and beverage tax for city parks, open spaces, recreation, and senior service purposes as follows: not less than twenty-five percent for capital expenses including acquisition, planning, development, repair and rehabilitation; up to seventy-three percent for operations, maintenance and capital expenses. Two percent of the tax will be used for administration of the tax. The tax rate will remain unchanged at 5%, and any increase to the tax rate or its use will require voter approval. The expiration date of the tax remains unchanged at December 31, 2030.

A "No" vote means, the existing food and beverage tax allocation will stay the same, with tax revenues going towards park capital expenses (not less than 25%), street repair debt or park capital expenses (up to 73%) and tax administration (2%).

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the city governing body; **or**

→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached? ☐ Yes ☐ No

Authorized City Official Not required to be notarized.

Name

Melissa Huhtula

Title

City Recorder

Mailing Address

20 E Main St, Ashland, OR 97520

Contact Phone

541.488.5307

By signing this document:

→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; **and**

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature

Date Signed

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Annotated to show deletions and additions to the Ashland Municipal Code sections being modified. Deletions are ~~bold lined through~~, and additions are **bold underlined**.

SECTION 1. Ashland Municipal Code 4.34.020 is hereby amended as follows:

A. Except for exempt or tax-capped activities specified in AMC 4.34.030, the City imposes and levies, in addition to all other taxes, fees, and charges of every kind, a tax upon:

- ORDINANCE NO.

- 1 a. All those items listed in subsections A.3.a-d of this section;
- 2 b. All bakery products sold for consumption on the premises; and
- 3 c. All “takeout” or “to go” orders of bakery products prepared on the premises except
- 4 for whole cakes, pies, and loaves of bread and any order consisting of six or more
- 5 bakery products.
- 6 5. Use of a delivery service for any activity under this section, whether an independent
- 7 delivery service or operator provided delivery service, does not excuse the operator from the
- 8 requirement to collect and remit the tax on the food and beverages sold.
- 9 B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the
- 10 seller for the food and beverages, or for the meal. In the computation of this tax any fraction of
- 11 one-half (1/2) cent or more shall be treated as one cent.
- 12 ~~C. The taxes collected by the City under this chapter shall be used as follows:~~
- 13 ~~1. Twenty-five percent (25%) shall be paid into a parks account for purposes of~~
- 14 ~~acquisition, planning, development, repair and rehabilitation of City parks per~~
- 15 ~~adopted plans of the Ashland Parks and Recreation Commission.~~
- 16 ~~2. The City may retain up to two percent (2%) of the tax collected for costs of~~
- 17 ~~administration and collection.~~
- 18 ~~3. The following amounts for fiscal years 2017 through 2022 must be used to pay for~~
- 19 ~~wastewater treatment plant debt and wastewater capital improvement projects, per~~
- 20 ~~the City of Ashland’s Capital Improvement Plan:~~
- 21 ~~a. In fiscal year 2017: \$1,868,290.00.~~
- 22 ~~b. In fiscal year 2018: \$1,608,600.00.~~
- 23 ~~c. In fiscal year 2019: \$1,600,600.00.~~
- 24 ~~d. In fiscal year 2020: \$1,600,000.00.~~
- 25 ~~e. In fiscal year 2021: \$1,650,000.00.~~
- 26 ~~f. In fiscal year 2022: \$1,650,000.00.~~
- 27 ~~4. Any taxes collected by the City under this chapter and not used as described in~~
- 28 ~~subsections C.1-3 of this section shall be paid into the Street Fund and used for~~
- 29 ~~street maintenance and reconstruction.~~
- 30 ~~5. Beginning in fiscal year 2023, the Council may, through the statutory budget~~
- ~~process, appropriate taxes under this chapter as follows:~~

1 a. ~~Not less than twenty-five percent (25%) for the acquisition, planning,~~
2 ~~development, repair and rehabilitation of City parks.~~

3 b. ~~Not less than an amount necessary to pay for debt service on any~~
4 ~~borrowing for street repair and rehabilitation per the City of Ashland~~
5 ~~Pavement Management Program.~~

6 e. ~~Up to two percent (2%) for the collection and administration of the tax.~~

7 d. ~~Except as provided in subsection D of this section, any remaining amounts~~
8 ~~shall be appropriated for purposes consistent with this chapter unless other~~
9 ~~purposes are approved by a Council-adopted ordinance enacted by a vote of~~
10 ~~the Ashland electorate.~~

11 C. The taxes collected under this chapter shall be used for city parks, open space,
12 recreation, and senior services as follows subject to other Ashland Municipal Codes and
13 City financial and administrative policies:

14 1. Not less than twenty-five percent (25%) for capital expenses, including
15 acquisition, planning, development, repair and rehabilitation.

16 2. Up to seventy-three percent (73%) for operations and maintenance and the uses
17 of subsection 3.C.1 above.

18 3. The City will retain two percent (2%) of the tax collected for costs of tax
19 administration and collection.

20 4. Amounts shall be appropriated in the City's General Fund for purposes consistent
21 with this chapter unless other purposes are approved by a Council-adopted
22 ordinance enacted by a vote of the Ashland electorate.

23
24 D. The Council may decrease the rate of the tax or eliminate the tax described in subsections A
25 and B of this section after a public hearing. Notice of the hearing shall be given by publication
26 in a newspaper of general circulation in the City at least ten days prior to the date of the public
27 hearing.

28 **SECTION 2. Codification.** In preparing this ordinance for publication and distribution, the
29 City Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within
30 such limitations, may:

(a) Renumber sections and parts of sections of the ordinance;

- 1 (b) Rearrange sections;
2 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
3 (d) Delete references to repealed sections;
4 (e) Substitute the proper subsection, section, or chapter numbers;
5 (f) Change capitalization and spelling for the purpose of uniformity;
6 (g) Add headings for purposes of grouping like sections together for ease of reference; and
7 (h) Correct manifest clerical, grammatical, or typographical errors.

8 **SECTION 3. Severability.** Each section of this ordinance, and any part thereof, is severable,
9 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
10 remainder of this ordinance shall remain in full force and effect.

11 **SECTION 4. Referral.** This ordinance is referred to the electors of the City of Ashland for
12 approval at the next local special election on May 16, 2023.

13 **SECTION 5. Effective Date.** This ordinance takes effect and becomes operative thirty (30)
14 days after the day on which it is approved by a majority of the voters.

15 PASSED by the City Council this _____ day of _____, 2023.

16
17 PASSED by the City Council this _____ day of _____, 2023.

18 ATTEST:

19
20 _____
21 Melissa Huhtala, City Recorder
22

23 SIGNED and APPROVED this _____ day of _____, 2023.
24

25 _____
26 _____, Mayor

27 Reviewed as to form:
28

29
30 Douglas M McGeary, Acting City Attorney

Chapter 4.34

FOOD AND BEVERAGE TAX

Sections:

4.34.010	Definitions
4.34.020	Tax Imposed
4.34.030	Exemptions
4.34.040	Operator's Duties
4.34.050	Reporting and Remitting
4.34.060	Penalties and Interest
4.34.070	Failure to Collect and Report Tax – Determination of Tax by Director
4.34.080	Appeal
4.34.090	Records
4.34.100	Refunds
4.34.110	Actions to Collect
4.34.120	Violations
4.34.130	Confidentiality
4.34.140	Examining Books, Records, or Persons
4.34.160	Termination of tax

Referred to voters by Resolution No. 2009-22 for 11/02/2009 election - Approved by the voters YES 4130; NO 2894 - Effective December 1, 2009

Referred to voters by Resolution No. 93-02 for 3/23/93 election - Approved by the voters YES 3658; NO 2980 - Effective July 1, 1993

4.34.010 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended:

A. "Caterer" means a person who prepares food at a business site, for compensation, for consumption on or off the business premises but within the corporate limits of the City.

- B. "Combination facility" has the same meaning as defined in OAR [333-150-0000\(4\)\(i\)](#) which the State of Oregon Department of Agriculture licenses or inspects under OAR [333-158-0000](#).
- C. "Director" means the Director of Finance of the City of Ashland, or his/her designee.
- D. "Food" includes all prepared food items and beverages, excluding alcoholic beverages, served in a restaurant including "takeout," "to go" or delivered orders.
- E. "Open Space Park Program" and "Open Space lands or easements" have the same meaning as used in Article XIX A of the Ashland City Charter.
- F. "Operator" means the person who is proprietor of the restaurant, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. Where the operator is a corporation, the term "operator" shall also include each and every member of the Board of Directors of such corporation for the time involved.
- G. "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit or pushcart by the State of Oregon Health Division and includes any establishment where food or beverage is prepared for consumption by the public or any establishment where the public obtains food or beverage so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments which prepare food or beverage in consumable form for service outside the premises where prepared. The term "restaurant" includes, but is not limited to, grocery store delis, coffee shops, and caterers; it also includes establishments where such food or beverage is prepared in a combination facility. The term "restaurant" does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.020 Tax Imposed

- A. Except for exempt or tax-capped activities specified in AMC [4.34.030](#), the City imposes and levies, in addition to all other taxes, fees and charges of every kind, a tax upon:
1. All food and beverages sold by restaurants located within the City to the public, except for whole cakes, pies, and loaves of bread if purchased for consumption off premises, and for alcoholic beverages;

2. All food and beverages sold by a caterer for an event located within the City, except alcoholic beverages and exempt events as defined in AMC [4.34.030.K](#);
 3. The following items sold by combination facilities:
 - a. Salads from salad bars;
 - b. Dispensed soft drinks and coffee;
 - c. Sandwiches or hot prepared foods ready for immediate consumption;
 - d. The following items, including toppings or additions, scooped or otherwise placed into a cone, bowl or other container for immediate consumption whether or not they are consumed within the confines of the premises where scooped or placed: any frozen dessert regulated by the Oregon State Department of Agriculture under ORS [621.311](#) and any ice cream, ice milk, sherbet or frozen yogurt. No tax shall be imposed under this subsection, however, on any item whose volume exceeds one-half (1/2) gallon or more.
 - e. Any other food mixed, cooked or processed on the premises in form or quantity for immediate consumption whether or not it is consumed within the confines of the premises where prepared; and
 4. The following items sold by combination facilities that are bakeries:
 - a. All those items listed in subsections A.3.a-d of this section;
 - b. All bakery products sold for consumption on the premises; and
 - c. All "takeout" or "to go" orders of bakery products prepared on the premises except for whole cakes, pies, and loaves of bread and any order consisting of six or more bakery products.
 5. Use of a delivery service for any activity under this section, whether an independent delivery service or operator provided delivery service, does not excuse the operator from the requirement to collect and remit the tax on the food and beverages sold.
- B. Such tax shall be imposed at a rate of five percent (5%) on the total amount charged by the seller for the food and beverages, or for the meal. In the computation of this tax any fraction of one-half (1/2) cent or more shall be treated as one cent.

C. The taxes collected under this chapter shall be used for city parks, open space, recreation, and senior services as follows subject to other Ashland Municipal Codes and City financial and administrative policies:

1. Not less than twenty-five percent (25%) for capital expenses, including acquisition, planning, development, repair, and rehabilitation.
2. Up to seventy-three percent (73%) for operations and maintenance and the uses of subsection 3.C.1 above.
3. The City will retain two percent (2%) of the tax collected for costs of tax administration and collection.
4. Amounts shall be appropriated in the City's General Fund for purposes consistent with this chapter unless other purposes are approved by a Council-adopted ordinance enacted by a vote of the Ashland electorate.

D. The Council may decrease the rate of the tax or eliminate the tax described in subsections [A](#) and [B](#) of this section after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least ten days prior to the date of the public hearing. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.030 Exemptions

The tax levied by AMC [4.34.020](#) shall be capped, at the amount specified, or shall not be collected or assessed on food or beverages:

- A. Sold by public or private schools or colleges except that food sold by independent contractor operators at such schools or colleges shall be subject to the tax imposed by this chapter;
- B. Sold on hospital grounds;
- C. Provided by bed and breakfast establishments to their guests;
- D. Sold in vending machines;

E. Sold in temporary restaurants including food stands, booths, street concessions and similar type operations, operated by nonprofit organizations or service clubs;

F. Served in connection with overnight or residential facilities – including, but not limited to, convalescent homes, nursing homes, retirement homes and motels – if the food and beverage are provided as part of the cost of sleeping accommodations;

G. Provided by nonprofit tax-exempt organizations to citizens over 60 years of age as a part of a recognized senior citizen nutritional program;

H. Sold for resale to the public;

I. Sold in bulk to the public for nonimmediate consumption off the premises including but not limited to ice cream packed in a container of one-half (1/2) gallon or more;

J. Which are candy, popcorn, nuts, chips, gum or other confections but not including ice cream, frozen yogurt, cakes, pies or other desserts;

K. Sold by an operator at a single food service event located within the City in which restaurant or catering services (exclusive of alcohol) exceed \$5,000.00, in which case, the applicable food and beverage tax shall not be excused but shall be capped at \$250.00. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.040 Operator's Duties

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for the food or beverage is collected from every purchaser. The amount of tax need not be separately stated from the amount of the food or beverage. Every operator required to collect the tax imposed in this chapter shall be entitled to retain five percent of all taxes collected to defray the costs of collections and remittance. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.050 Reporting and Remitting

A. *Reporting.* Every operator shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January), make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The operator may request or the Director may establish shorter reporting periods for any operator if the operator or director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the liability. A return shall not be considered filed until it is actually received by the Director.

B. *Remitting.* At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions which are not prejudicial to the interest of the City. A condition which is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. *Order of Payments.* Nondesignated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. The Director, when in the Director's discretion determines that it will be in the best interest of the City, may specify that a different order of payment credit should be followed with regard to a particular tax or factual situation. The Director may establish shorter reporting periods for any operator if the Director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2903, amended, 01/06/2004; Ord. 2885, amended, 08/06/2002)

4.34.060 Penalties and Interest

- A. Any operator, who fails to remit any portion of any tax imposed by this chapter within the time required, shall pay a penalty of ten percent of the amount of the tax, in addition to the amount of the tax.
- B. Any operator who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections [A](#) and [B](#) of this section.
- D. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- F. Notwithstanding AMC [4.34.020.C](#), all sums collected pursuant to the penalty provisions in subsections [A](#), [B](#) and [C](#) of this section shall be distributed to the City of Ashland Central Service Fund to offset the costs of auditing and enforcement of this tax.
- G. *Waiver of Penalties.* Penalties and interest for certain late tax payments may be waived pursuant to AMC [2.28.045.D](#). (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2983, amended, 05/05/2009)

4.34.070 Failure to Collect and Report Tax – Determination of Tax by Director

If any operator should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to

obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any operator, the Director shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address. Such operator may make an appeal of such determination as provided in AMC [4.34.080](#). If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

4.34.080 Appeal

Any operator aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the administrative appeals process in AMC [2.30.020](#), except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

4.34.090 Records

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all such records as may be necessary to determine the amount of such tax. The Director shall have the right to inspect all records at all reasonable times. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

4.34.100 Refunds

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsection [B](#) of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.

B. The Director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, an operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received in a manner prescribed by the Director. The operator shall notify Director of claimant's choice no later than 15 days following the date director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 15-day period and the operator is still in business, a credit will be granted against the tax liability for the next reporting period. If the operator is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2903, amended, 01/06/2004)

4.34.110 Actions to Collect

Any tax required to be paid by any operator under the provisions of this chapter shall be deemed a debt owed by the operator to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Ashland for the recovery of such amount. In lieu of filing an

action for the recovery, the City of Ashland, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ashland has complied with the provisions set forth in ORS [697.105](#), in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50.00 or 50 percent of the outstanding tax, penalties and interest owing. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2931, amended, 09/19/2006; Ord. 2885, amended, 08/06/2002)

4.34.120 Violations

All violations of this chapter are punishable as set forth in AMC [1.08.020](#). It is a violation of this chapter for any operator or other person to:

- A. Fail or refuse to comply as required herein;
- B. Fail or refuse to furnish any return required to be made;
- C. Fail or refuse to permit inspection of records;
- D. Fail or refuse to furnish a supplemental return or other data required by the Director;
- E. Render a false or fraudulent return or claim;
- F. Fail, refuse or neglect to remit the tax to the City by the due date.

Violation of subsections A-D and F above shall be considered a Class I violation. Filing a false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC [1.08](#). The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance. (Ord. 3133, amended, 08/16/2016; Ord. 3023, amended, 08/03/2010; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

4.34.130 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a restaurant; or
- B. The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual operator; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim or an appeal for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business's failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds \$5,000.00. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS [192.501\(5\)](#). (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

4.34.140 Examining Books, Records, or Persons

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by it for that purpose any books, papers, records, or memoranda, including copies of operator's state and federal income tax return, bearing upon the matter of the operator's tax return. (Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009; Ord. 2885, amended, 08/06/2002)

4.34.160 Termination of tax

This chapter shall expire on **December 31, 2030**, unless extended by a vote of the electorate.
(Ord. 3133, amended, 08/16/2016; Ord. 2991, amended, 12/01/2009)

The Ashland Municipal Code is current through Ordinance 3203, passed November 2, 2021.

Disclaimer: The City Recorder's office has the official version of the Ashland Municipal Code. Users should contact the City Recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.ashland.or.us](http://www.ashland.or.us)

City Telephone: (541) 488-5307

[Code Publishing Company](#)

PET-01

CAPTION: PROPOSED AMENDMENT TO ASHLAND'S FOOD AND BEVERAGE TAX ORDINANCE

QUESTION: SHALL THE ORDINANCE BE AMENDED TO DEDICATE MOST REVENUES RECEIVED FOR PARKS AND OPEN SPACE AND EXTEND THE SUNSET DATE?

SUMMARY: THE CITY OF ASHLAND'S CURRENT FOOD AND BEVERAGE TAX ORDINANCE REQUIRES THAT NOT LESS THAN TWENTY-FIVE PERCENT (25%) OF THE TAX COLLECTED BE APPROPRIATED FOR THE ACQUISITION, PLANNING, DEVELOPMENT, REPAIR AND REHABILITATION OF CITY PARKS. UP TO TWO PERCENT (2%) MAY BE APPROPRIATED FOR THE COLLECTION AND ADMINISTRATION OF THE TAX. THE REMAINING AMOUNT MAY BE APPROPRIATED FOR STREET REPAIR AND REHABILITATION AND FOR PARKS.

THIS MEASURE WOULD REQUIRE THAT NOT LESS THAN NINETY-EIGHT PERCENT OF THE TAX (98%) BE APPROPRIATED FOR CITY PARKS. THIS MEASURE WOULD ALLOW THE TAX TO BE USED FOR PARKS OPERATIONS AND MAINTENANCE IN ADDITION TO ACQUISITION, PLANNING, DEVELOPMENT, REPAIR AND REHABILITATION. IT WOULD EXTEND THE EXPIRATION DATE OF THE TAX FROM DECEMBER 31, 2030, TO DECEMBER 31, 2040. IT WOULD BECOME EFFECTIVE UPON APPROVAL OF ASHLAND VOTERS.

THIS MEASURE WOULD NOT CHANGE THE CURRENT TAX RATE OF FIVE PERCENT (5%) AND PROVIDES THAT THE TAX RATE AND USE OF TAX COULD NOT CHANGE WITHOUT VOTER APPROVAL.

Council Business Meeting

February 7, 2023

Agenda Item	City Council Compensation Ballot Measure Language	
From	Doug McGeary Melissa Huhtala	Acting City Attorney City Recorder
Contact	Doug.mcgeary@ashland.or.us , 541-488-5350 Melissa.huhtala@ashland.or.us , 541-5222084	

SUMMARY

Council has requested information regarding adding an item to the May 16th Special Called Election ballot for citizens of Ashland to vote to change the compensation for the Mayor and City Councilors of the City of Ashland.

Under the current language of the Ashland City Charter, the Mayor and City Councilors annually receive \$500 and \$350 in compensation respectively for their work on behalf of the citizens of Ashland. These annual compensation amounts were set by amendment to the City Charter in 1954 which were increased from the original annual compensation amounts adopted by public vote in 1917 of \$100 and \$75 respectively. Under the current language of the City Charter adopted by public vote in 1970, a change to the Mayor and City Councilors compensation “shall be submitted to the vote of the people” of Ashland.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

The City Council may wish to propose a public vote to change their compensation at the May 16th Special Called Election to be conducted across Jackson County. To include an item on a May 16th ballot, the City must submit ballot language (including caption, question and summary language) to the Jackson County Clerk before February 15th. The ballot language must be reviewed and approved by the City Attorney prior to its submittal. Finally, voters’ pamphlet measure arguments for a May 16th election are due to the Jackson County Clerk by March 20th.

For purposes of the City Council’s discussion, the City Attorney has prepared draft ballot language in case the Council determines a change of compensation should be put forward for a vote of Ashland citizens (see attached Draft Compensation Ballot Item).

STAFF RECOMMENDATION

N/A

FISCAL IMPACTS

The City Recorder has been in contact with the Jackson County requesting a cost estimate for Ashland’s share of Jackson County’s Special Called Election. The County Clerk has indicated it is not possible to estimate the cost for Ashland but has informed the City Recorder that it will be a countywide election with several jurisdictions sharing the cost. Ashland will not be required to cover the full cost of an election. The best estimate of Ashland’s share of election costs is \$5,000-\$15,000. The cost will be covered by expected Administration budget ending balances (City Council, City Manager, HR, Legal, Courts, etc.). Once the actual election cost is known, the actual cost amount will be transferred to the City Recorder’s budget for expensing from Administration budgets.

The annual fiscal cost of a Mayor and Councilor compensation change, assuming it is approved by Ashland votes, will depend on the level of compensation proposed to the voters. If approved for implementation for the balance of the current fiscal year, it is anticipated that the current budget for City Council expenditures will be able to absorb an increase in compensation.

BACKGROUND AND ADDITIONAL INFORMATION

Under Oregon's constitution, elected official cannot hold more than one lucrative public position at the same time. A lucrative office is defined by salary or other compensation beyond expenses. Also, under the state's ethics rules, elected officials may not vote to increase their own compensation; votes to increase compensation may only apply to subsequent election holders of the voting individual's position. A League of Oregon Cities survey on elected officials' compensation indicates salary or stipend compensation is usually provided at either a flat annual, monthly or per meeting amount.

REFERENCES & ATTACHMENTS

Draft Council Compensation Ballot Item

Notice of Measure Election

City

SEL 802

rev 01/18 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

Notice

Date of Notice

Name of City or Cities

Date of Election

City of Ashland

May 16, 2023

Final Ballot Title The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Change compensation for City of Ashland Mayor and City Councilors.

Question 20 words which plainly phrases the chief purpose of the measure.

Shall City of Ashland Mayor and City Councilors annual compensation change to \$____ each annually / \$____ each monthly?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

Under the Ashland City Charter, the Mayor and City Councilors annual compensation is \$500 and \$350 respectively for their work on behalf of the citizens of Ashland. These compensation amounts were adopted in the City Charter in 1954. The current City Charter requires any change to the Mayor and City Councilors compensation "shall be submitted to the vote of the people" of Ashland.

A "Yes" vote changes the Mayor and Councilors' compensation to \$____ each annually / \$____ each monthly for preparing for and attending normally scheduled City Council meeting (4 meetings monthly).

A "No" vote means, the City of Ashland's Mayor and City Councilors annual compensation will not change from their current annual amounts of \$500 and \$350 respectively.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:

→ any measure referred by the city governing body; or

→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached? ☐ Yes ☐ No

Authorized City Official Not required to be notarized.

Name

Melissa Huhtula

Title

City Recorder

Mailing Address

20 E Main St, Ashland, OR 97520

Contact Phone

541.488.5307

By signing this document:

→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; and

→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature

Date Signed

Council Business Meeting

February 7, 2023

Agenda Item	Resolution 2023-01 Referring Ballot Measures Language to City Elections Officer for May 16, 2023, Special Called Election	
From	Joseph Lessard Doug McGeary	City Manager City Attorney
Contact	joe.lessard@ashland.or.us doug.mcgeary@ashland.or.us	

SUMMARY

A formal resolution is required to direct the City Recorder to submit ballot language to the Jackson County Elections Officer.

Adopt a formal resolution (see attached) submitting the corresponding ballot measure to the City of Ashland's Elections Officer (the City Recorder) for submittal to the Jackson County Elections Officer no later than Feb. 14th for inclusion as a referendum item on the May 16th Special Called Election ballot.

FISCAL IMPACTS

N/A

STAFF RECOMMENDATION

N/A

ACTIONS, OPTIONS & POTENTIAL MOTIONS

The following two actions by the City Council are necessary to advance the Food and Beverage Tax and the Mayor and Council compensation items to a public vote:

I move to approve Resolution 2023-01 submitting the Food and Beverage Tax amendments and the Mayor and Council compensation change ballot items to the Jackson County Elections Officer no later than Feb. 14th for inclusion as referendum items on the May 16th Special Called Election ballot.

REFERENCES & ATTACHMENTS

Resolution 2023-01

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A RESOLUTION OF THE CITY OF ASHLAND SUBMITTING TO THE VOTERS
AT THE MAY 16, 2023 SPEICAL CALLED ELECTION
A PROPOSED AMENDMENTS TO CHAPTER 4.34 OF THE ASHLAND MUNICIPAL
CODE RELATED TO THE FOOD AND BEVERAGE TAX
AND
A MEASURE TO CHANGE THE MAYOR AND CITY COUNCIL COMPENSATION

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,
RESOLVES AS FOLLOWS:**

SECTION 1. The City Council submits to the qualified voters of the City of Ashland the question of approving or rejecting amendments to Chapter 4.34 of the Ashland Municipal Code related to the City's food and beverage tax and which shall become effective only upon its passage by the electorate.

SECTION 2. The City Council submits to the qualified voters of the City of Ashland the question of approving or rejecting changes to the Mayor and City Council compensation.

SECTION 3. The City Council hereby refers these questions to the ballot of the May 16, 202 Special Called Election which shall become effective only upon it passage by the electorate.

SECTION 4. The City Recorder shall cause to be delivered to the Elections Officer of Jackson County, Oregon, the ballot title attached hereto as “Exhibit A” and fully incorporated herein by this reference.

SECTION 5. The City Attorney is hereby authorized to alter the text of the ballot title to comply with any rules, procedures, or practices of the Elections Officer of Jackson County, Oregon, to implement the requirement of Oregon law.

SECTION 5. This resolution is effective upon adoption.

ADOPTED by the City Council this _____ day of _____, 2023.

ATTEST:

Melissa Huhtala, City Recorder

SIGNED and APPROVED this day of , 2023

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Tonya Graham, Chair of the City Council

Reviewed as to form:

Doug McGeary, Acting City Attorney

Council Business Meeting

February 7, 2023

Agenda Item	Authorization of Telecommunication Franchise to Sprint Communications	
From	Douglas M. McGeary	Acting City Attorney
Contact	doug.mcgeary@ashland.or.us	

SUMMARY

This is an amendment to renew a franchise agreement with Sprint Communications Company L.P., now a wholly owned subsidiary of T-Mobile USA, Inc. Other than the dates, this amendment agreement maintains the same terms and conditions utilized in the underlying agreement. The amendment will take effect retroactively to begin on September 30, 2022 and will expire on September 30, 2023.

POLICIES, PLANS & GOALS SUPPORTED

BACKGROUND AND ADDITIONAL INFORMATION

This is a limited use franchise issued under the city's telecommunications ordinance. A limited use franchise is granted to a telecommunications provider that does not directly serve customers within the city. Compensation for the use of the public right of way has been set by Resolution No. 99-70 and is measured, for this type of grantee, by the number of linear feet of public right of way occupied.

The current agreement expired at the end of September 2022, but the parties have agreed to retroactively renew the agreement by amendment starting at September 30, 2022 and terminate the amendment on September 30, 2023 with the intent that the city's small cell ordinance will be complete by that time, which may require adjustments in the agreement going forward in time. The renewed agreement grants the continued use of City right-of-way for 13,000 linear feet of communications infrastructure.

The attached amendment to the agreement is consistent with provisions set forth in Chapter 16 of the Ashland Municipal Code and associated fees outlined in resolution 99-70.

FISCAL IMPACTS

Revenue from Sprint Communications Company is based on fees set forth in resolution 99-70. In 2022 the annual payment from Sprint Communications was \$52,911.00 which is derived from the original minimum fee of \$4,000 from resolution 99-70 and adjusted annually based on the March Consumer Price Index-All Urban Consumers (CPI-U).

DISCUSSION QUESTIONS

SUGGESTED NEXT STEPS

Staff recommends the Council approve the franchise agreement for Sprint Communications Company L.P.

REFERENCES & ATTACHMENTS

Franchise Agreement
Resolution 99-70

AMENDMENT NO. 2
to
FRANCHISE AGREEMENT
between
THE CITY OF ASHLAND,
an Oregon municipal corporation,
("City")
and
SPRINT COMMUNICATIONS COMPANY L.P.,
a wholly owned subsidiary of T-Mobile USA, Inc.,
("Sprint")
for
Telecommunications Services

RECITALS

WHEREAS, Sprint Communications Company L.P., now a wholly owned subsidiary of T-Mobile USA, Inc., currently holds a Franchise Agreement with the City of Ashland effective October 1, 2016 ("Agreement"); and

WHEREAS, Sprint's Agreement with the City expires on September 30, 2022; and

WHEREAS, Sprint provided written notice to the City informing the City of Sprint's desire to renew the existing Agreement or enter into a new franchise with the City; and

WHEREAS, the City desires to update the provisions of the Ashland Municipal Code ("AMC") regarding telecommunications; and

WHEREAS, the City has requested an extension of the existing Agreement while it updates the AMC; and

WHEREAS, it is in the public interest to extend the existing Agreement for an additional period of time.

AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits and obligations set forth herein, the parties agree as follows:

1. The amendment to the Agreement between the City and Sprint is retroactively effective as of September 30, 2022 and is extended through and including September 30, 2023 or after the city decides upon amendments to its Rights-of-Way ordinance and design standards resolutions for telecommunications facilities, which ever date occurs first.

2. This Amendment No. 2 is effective upon being signed by both parties.

3. Except as specifically modified by this Amendment No. 2, the terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this Amendment No. 2 to be signed in their respective names by their duly authorized representatives as of the dates set forth below:

CITY OF ASHLAND, OREGON

By: _____
Joseph L. Lessard

Title: City Manager

Dated: _____

SPRINT COMMUNICATIONS COMPANY L.P.

By: _____

Printed Name: _____

Title: _____

Dated: _____

Approved as to form



Douglas M McGeary
Acting City Attorney

RESOLUTION NO. 99- 70

**A RESOLUTION ADOPTING FEES FOR TELECOMMUNICATION
REGISTRATION, APPLICATIONS, CONSTRUCTION, FRANCHISES
AND OTHER SERVICES UNDER ASHLAND MUNICIPAL CODE
TITLE 16; AND REPEALING RESOLUTION 98-24**

Recitals:

A. The city's telecommunications ordinance adopted in 1998 and codified in Title 16 of the Ashland Municipal Code provides that the city council will set telecommunication franchise fees by resolution.

B. Telecommunication franchise fees are established by the city for the purpose of assuring that the city's current and ongoing costs of granting and regulating private access to, and the use of, public rights-of-way are fully compensated by the persons seeking such access and causing such costs and to secure fair and reasonable compensation to the city and its residents for permitting private use of the public right of way.

C. Recent amendments to Title 16 require that the council set certain other telecommunication-related fees by resolution, and this resolution is intended to implement such Title 16 requirements.

THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

SECTION 1. Registration fee. The registration fee for telecommunication carriers is established in Ashland Municipal Code (AMC) section 16.08.030 as being equal to the license fee for a new business as provided in AMC Chapter 6.04.

SECTION 2. Construction Permit Fee. (AMC § 16.12.070). Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit for construction within the public right of way, the applicant must pay a permit fee equal to \$250.00 or six-tenths of one percent (0.6%) of the estimated cost of constructing the telecommunications facilities, whichever is greater.

SECTION 3. Diminished Pavement Life Fee. (AMC § 16.12.075) For any construction requiring pavement cuts within a public right of way, the amount to be paid to reimburse city for the pavement degradation and shortened pavement life that results from such cuts is established as follows:

For Longitudinal Excavations:

<u>Age of Street Pavement*</u>	<u>Fee</u>
Less than 5 years	\$3.50/linear foot of excavation
Between 5 and 10 years	\$3.00/linear foot
Between 10 and 15 years	\$2.00/linear foot
Over 15 years	\$1.00/linear foot

For Transverse Excavations:

<u>Age of Street Pavement*</u>	<u>Fee</u>
Less than 5 years	\$7.00/linear foot
Between 5 and 10 years	\$6.00/linear foot
Between 10 and 15 years	\$4.00/linear foot
Over 15 years	\$2.00/linear foot

*The age of the street pavement where excavation occurs will be the period of time since the street surface was resurfaced, overlaid or reconstructed, measured from the fiscal year in which such work was completed to the fiscal year when a permit is issued for the excavation.

SECTION 4. Application and Review Fee. (AMC § 16.20.040). Unless otherwise provided in a franchise agreement, the applicant must pay a review fee of \$250.00.

SECTION 5. Franchise Fee. (AMC § 16.24.070) A telecommunications grantee must pay a franchise fee to the city, through the duration of its franchise, as follows:

A. For all grantees except as provided in paragraphs B and C, a fee of 5 percent of gross revenues paid quarterly. The minimum quarterly fee will be \$1,000. Gross revenue is defined in section 16.04.040.L of the Ashland Municipal Code.

B. The franchise fee for a telecommunication utility shall equal 7% of its gross revenue on exchange access services earned within the boundaries of the city.

C. For limited use telecommunications grantees, a minimum annual fee, payable in advance, of \$4,000 or \$1.22 per linear foot of right-of-way used, whichever sum is greater. This fee will increase annually in July of each year, by multiplying the fee by a fraction, the numerator of which is the CPI Index Figure for the month of March preceding the July in which the fee is to be increased and the denominator of which is the Base CPI Index Figure. As used in this section, "Index" refers to the All Urban Consumers (CPI-U), U.S. City Average, CPI index published by the Bureau of Labor Statistics of the United States Department of Labor. "Base CPI Index Figure" will refer to the Index number indicated for the

month of March, 1998, and the "CPI Index Figure" for any other month will refer to the Index number for that month.

Beginning July 1, 2001, the fee will be \$2.50 per linear foot. This fee will increase annually by the CPI Index as set forth above. The base CPI will be March of 1998.

A limited use telecommunication grantee is defined as one whose franchise limits the amount of linear feet the grantee may occupy, or one who has a franchise as of October 1998 for the purpose of long-distance telecommunications.

SECTION 6. Resolution 98-24 is repealed.

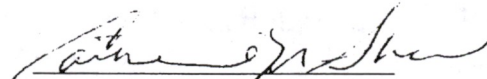
This resolution was read by title only in accordance with Ashland Municipal Code

\$2.04.090 duly PASSED and ADOPTED this 7 day of December, 1999.



Barbara Christensen, City Recorder

SIGNED and APPROVED this 8 day of December, 1999.


Catherine M. Shaw, Mayor

Reviewed as to form:



Paul Nolte, City Attorney