

Recreation Advisory Board

Agenda

**Monday, June 24, 2019
Louisville Recreation Center
900 W Via Appia
6:30 PM-Regular Meeting**

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Approval of Minutes
- V. Public Comments on Items Not on the Agenda – 5 minutes
- VI. City Council Update –10 minutes
- VII. Staff Updates-Nathan
 - De-Brucing
 - CCGC strategic plan update
- VIII. Recreation Staff Update-
 - Punchlist/Construction Update
 - Outdoor Rec Amenities Sub Committee
- IX. Discussion Items for next Meeting on Monday, July 22nd
- X. Adjourn

Recreation Advisory Board

Meeting Minutes

**May 20, 2019
Recreation Center
900 West Via Appia
6:30 PM**

Call to Order – Chairperson Norgard called the meeting to order at 6:38.

Roll Call was taken. Results follow:

Board Members Present: Rich Bradfield, Christin Hueston, Gene Kutscher, Angie Layton, Lisa Norgard, Michele Van Pelt

Board Members Absent: Audrey Debarros, Brett Nickerson

Staff Members Present: Ginger Cross, Kathy Martin, Nathan Mosley

Council Members Present: Jeff Lipton

Approval of Agenda – The agenda was approved by all members.

Motion: Bradfield

Second: Van Pelt

Approval of Meeting Minutes – The minutes from the April 22, 2019 meeting were approved by all members.

Motion: Layton

Second: Norgard

Public Comments – None

City Council Update – Jeff Lipton summarized relevant items.

- The City Council Finance Committee is continuing to investigate the impact of the Recreation Center sales tax and what to propose about it in light of needs and sales tax trends.
- Staff should be encouraged to promote whatever is necessary to complete all aspects of the Recreation Center.

City of Louisville

*Parks & Recreation Department 749 Main Street Louisville CO 80027
303.335.4903 (phone) 303.335.4738 (fax) www.LouisvilleCO.gov*

Staff Update

- Nathan Mosley reported that the position of Golf Course Administrative Assistant is open.

Outdoor Recreation Amenities

- Rich Bradfield reported on a preliminary meeting of the Outdoor Recreation subcommittee that was attended by himself, Gene Kutscher and staff members Jesse DeGraw, Dean Johnson, Kathy Martin, and Nathan Mosely. This subcommittee will be joined in the future by a subcommittee from Parks.
- Some preliminary steps will include surveying our facilities and benchmarking them against local and similar nationwide communities. In addition, Rich Bradfield developed a draft of a preliminary survey to ascertain the interests of our community.
- Gene Kutscher added that the committee will also assess Louisville population trends so we encompass future as well as current needs.
- Jeff Lipton noted that Cottonwood Park's upgrade and the scheduled 2021 Recreation Center Campus Master Plan update are the next opportunities to enhance our outdoor facilities.

Recreation and Golf Staff Marketing, Dashboard and Construction Update

Marketing and Programming

- Ginger Cross reported on numerous initiatives in our marketing strategies. Highlights include: targeting announcements to specific Recreation Center subgroups to see which messages work best, using targeted announcements to boost under-enrolled programs, and placing big events on the community calendar. A separate but similar initiative is ongoing for the golf program.
- She reported that the Golf Course app has proven to be very successful in allowing flexible pricing, as well as other marketing tools, to increase overall revenue.

Dashboard Subcommittee

- Kathy Martin and Nate Mosley presented the latest iteration of the Recreation Center Dashboard. General response was that it was a significant improvement. Rich Bradfield pointed out, to wide agreement, that refinements are still necessary so that it better tells a smoothly flowing story of the financial picture. Suggestions were put forward by the committee.

Construction and Punch List Update

- Kathy Martin discussed the current readiness of the Memory Square Pool, soon to open.
- She also reported on the status of the recreation Center punch list, with emphasis on landscaping, tennis court repairs and sun amelioration for the west-facing second floor. Jeff Lipton asked for an exploration of sophisticated controls for the proposed blinds.
- Nate Mosley distributed a tentative punch list/new items list that would enhance the Recreation Center. This list was prioritized by the staff. He asked the Committee to comment on and add to the list in time for a discussion at our next meeting. The goal is to have the entire project, with any enhancements, completed by the end of July, the scheduled date of the roof completion.

Discussion Items for Next Meeting

- City Council Finance Committee update.
 - D-Bruceing discussion.
- Outdoor Education subcommittee report
- Recreation Center Staff and Dashboard Update
- Analysis of Recreation Center staff's preliminary list of priorities
- Discussion: High School Swim Teams and the Recreation Center
- Golf Strategic Plan update

Adjourn – The meeting was adjourned at 8:07

Motion: Norgard

Second: Heuston

Memorandum

To: Recreation Advisory Board (RAB)

From: Nathan Mosley, Director of Parks, Recreation and Open Space

Date: June 24, 2019

Re: Proposed Excess Tax Revenue/Taxpayer Bill of Rights (TABOR) Ballot Issue language

Purpose:

The purpose of this memo is to present RAB with an update on the general approach the city is taking regarding the excess tax generated by the recreation tax and the proposed language for a ballot initiative.

Background:

In November of 2016, City voters approved ballot issue 2B to increase sales and use taxes by 0.15% with the intent of using those for operation and maintenance of the Louisville Recreation and Senior Center and Memory Square pool facilities.

As required by the Taxpayer Bill of Rights (TABOR), the City had to include estimates of how much revenue would be generated in 2018 by the 0.15% increase (\$575,000) as well the estimated 2018 fiscal year spending without the increase (\$33,470,000) as part of the 2016 ballot initiative process.

The City exceeded both of these estimates in 2018.

Next Steps

Because the City has exceeded both estimates it will require voter approval to retain excess revenues generated by the tax and/or retain the full 0.15% rate. At the June 11th meeting City Council discussed two ballot options:

- Option 1 - Would allow for the City to retain excess revenue and retain the full tax rate. (No Refund; Retain Rate)
- Option 2 - Would require the city to refund excess revenue, but would allow the City to retain the full tax rate moving forward. (Refund Excess; Retain Rate)

City Council provided direction to staff to bring an ordinance on July 9th that would seek voter approval for option 1; to retain excess revenues and retain the full tax rate moving forward.



As mentioned in the ballot language, this request to City voters will not result in any additional or new taxes. If approved, the initiative will only allow the City to retain revenues collected to date and to retain the 0.15% tax rate that voters approved in 2016 and to spend those revenues for the purposes stated in the original ballot question language.

FISCAL IMPACT:

Varies based on outcome of the ballot election. Please see financial impact information from attachment #1.

RECOMMENDATION:

N/A, Informational only

ATTACHMENT(S):

1. TABOR Ballot Info

Sincerely,

Nathan Mosley

Nathan Mosley, Director
Parks, Recreation and Open Space

**SUBJECT: DISCUSSION/DIRECTION – PROPOSED EXCESS TAX
REVENUE TABOR BALLOT ISSUE LANGUAGE**

DATE: JUNE 11, 2019

**PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY
HEATHER BALSER, CITY MANAGER**

SUMMARY:

The City exceeded its 2018 sales and use tax revenue estimates from the 0.15 percent recreation tax used in connection with Ballot Issue 2B, approved by the voters in November 2016, and the total fiscal year spending estimate for 2018.

At the November 8, 2016 election, City voters approved the following ballot issue:

SHALL THE CITY OF LOUISVILLE TAXES BE INCREASED \$575,000 IN 2018 AND THEN ANNUALLY BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED THEREAFTER FROM THE LEVY OF AN ADDITIONAL SALES AND USE TAX OF 0.15 PERCENT BEGINNING JANUARY 1, 2018 AND CONTINUING THEREAFTER; WITH SUCH TAX TO BE IMPOSED ONLY IF REFERRED MEASURE 2A, REFERRED TO REGISTERED ELECTORS OF THE CITY AT THE NOVEMBER 8, 2016 ELECTION, IS APPROVED BY A MAJORITY OF SUCH ELECTORS; WITH THE NET PROCEEDS OF SUCH SALES AND USE TAX TO BE COLLECTED, RETAINED AND SPENT FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK; AND SHALL THE CITY BE PERMITTED TO COLLECT, RETAIN AND EXPEND ALL REVENUES DERIVED FROM SUCH SALES AND USE TAX AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

In connection with new taxes, TABOR requires the distribution of a ballot issue notice which requires the City disclose: “For the first full year of each proposed district (City) tax increase, district estimates for the dollar amount of each increase and of district fiscal year spending without the increase.” For 2018, the first year of collection of the recreation tax, the notice estimated the dollar amount of the increase to be \$575,000 and the estimated 2018 fiscal year spending without the increase to be \$33,470,000. Previous Finance Committee memos with additional detail on TABOR requirements and applications are included in the attachments.

Absent later voter approval, TABOR requires a refund if either the revenue generated by the new tax exceeded the estimate (\$575,000) or the City’s total 2018 fiscal year spending without the tax increase exceeded the amount in the TABOR notice

(\$33,470,000), and requires the tax rate be reduced up to 100 % in future years in proportion to the combined dollar excess. Revenues exceeded both estimates and thus, absent later voter approval to retain this excess, refunds will be due for both in addition to requiring a rate reduction.

Therefore, should the voters not approve the City retaining the revenues exceeding the estimates included in the election notice mailed to voters in connection with the tax increase, the City will need to refund the revenue collected above the \$575,000 estimate for the new tax (\$270,795) plus the amount the City's 2018 fiscal year spending with the tax increase exceeded the estimate in the TABOR notice (\$4,662,787) but the amount of refund should be capped at the total revenue collected for the 0.15% tax in 2018 (\$845,795). Additionally, a rate reduction would be applied in future years; due to the large amount of the combined dollar excess, this would likely result in the rate being reduced to 0.0%. Options for discussion of how to logistically provide a refund as well as rate reduction consideration is included in the attached June 11, 2018 Finance Committee memorandum.

At the April 1st Finance Committee meeting, members reviewed two alternative TABOR ballot issues. The first would seek voter approval to retain excess revenues received from the 2016 sales and use tax increase and retain the 0.15% rate increase. The second would seek voter approval to retain the 0.15% rate increase, but not retain revenues in excess of the revenue estimates set forth in the 2016 Tabor notice (which would provide a refund of \$845,795). Final proposed ballot language for both alternatives is attached. The Finance Committee supports City Council referring the first proposed ballot issue alternative to the voters, which provides no refund and retains the 0.15% rate increase. Once direction is provided regarding the desired ballot language, staff will provide an ordinance on July 9, 2019 for further consideration addressing the TABOR issues and to seek voter approval.

FISCAL IMPACT:

Fiscal impacts are as follows for the following options:

- 1) Direct a refund of 2018 excess revenue (\$845,795) in 2019, but refer a ballot issue to the voters requesting approval to continue the tax at the 0.15% rate.
- 2) Refer a ballot issue to the voters requesting approval to keep all revenues from the tax and continue the tax at the 0.15% rate.

PROGRAM/SUB-PROGRAM IMPACT:

This addresses the Recreation program area to promote the physical, mental, and social well-being of residents thorough a broad range of high-quality, reasonably priced recreation and leisure activities for people of all ages, interests, and ability levels.

RECOMMENDATION:

Finance Committee and staff support referring a ballot issue to the voters requesting approval to keep all revenues from the tax and continue the tax at the 0.15% rate.

SUBJECT: EXCESS TAX REVENUE TABOR BALLOT ISSUE LANGUAGE

DATE: JUNE 11, 2019

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ATTACHMENT(S):

1. Proposed TABOR ballot language options
2. June 11, 2018 Finance Committee Memo
3. April 1, 2019 Finance Committee Memo
4. May 17, 2019 Finance Committee Memo

FINAL PROPOSED BALLOT ISSUE LANGUAGE

NO REFUND; RETAIN RATE:

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAX RATE, MAY THE CITY OF LOUISVILLE KEEP REVENUES THAT OTHERWISE WOULD BE REFUNDED FOR EXCEEDING ESTIMATES INCLUDED IN THE ELECTION NOTICE MAILED TO VOTERS FOR THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, WHETHER OR NOT SUCH REVENUES HAVE ALREADY BEEN SPENT, AND CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK?

ALTERNATIVE CITY OF LOUISVILLE BALLOT ISSUE LANGUAGE (REFUND EXCESS; RETAIN RATE):

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAX RATE, SHALL THE CITY OF LOUISVILLE REFUND TO THE TAXPAYERS REVENUE RECEIVED BY THE CITY IN 2018 EXCEEDING ESTIMATES INCLUDED IN THE ELECTION NOTICE MAILED TO VOTERS FOR THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, AND BE PERMITTED TO CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK?

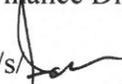
Light Kelly

Attorneys at Law

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slight@lightkelly.com

MEMORANDUM

TO: Louisville City Council Finance Committee
Heather Balsler, City Manager
Kevin Watson, Finance Director

FROM: Samuel J. Light /s/ 
Nicolas D. Cotton-Baez /s/

DATE: June 11, 2018

RE: City Recreation Sales and Use Tax - Excess Revenue
Obligations under Taxpayer's Bill of Rights (TABOR)

Introduction. The City anticipates its 2018 sales and use tax revenue from the 0.15 percent recreation tax will exceed the estimate used in connection with Ballot Issue 2B, approved by the voters in November 2016. This memo outlines TABOR requirements related to the receipt of such excess tax revenues, and outlines for the Committee's discussion options for how the City might address these issues.

Background. At the November 8, 2016 election, City voters approved the following ballot issue:

SHALL CITY OF LOUISVILLE TAXES BE INCREASED \$575,000 IN 2018 AND THEN ANNUALLY BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED THEREAFTER FROM THE LEVY OF AN ADDITIONAL SALES AND USE TAX OF 0.15 PERCENT BEGINNING JANUARY 1, 2018 AND CONTINUING THEREAFTER; WITH SUCH TAX TO BE IMPOSED ONLY IF REFERRED MEASURE 2A, REFERRED TO REGISTERED ELECTORS OF THE CITY AT THE NOVEMBER 8, 2016, ELECTION, IS APPROVED BY A MAJORITY OF SUCH ELECTORS; WITH THE NET PROCEEDS OF SUCH SALES AND USE TAX TO BE COLLECTED, RETAINED AND SPENT FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK; AND SHALL THE CITY BE PERMITTED TO COLLECT, RETAIN AND EXPEND ALL REVENUES DERIVED FROM SUCH SALES AND USE TAX AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

In connection with new taxes, TABOR requires the distribution of a ballot issue notice which, as pertinent here, requires the City disclose: "For the first full fiscal year of each proposed district [City] tax increase, district estimates of the dollar amount of each increase and of district fiscal year

spending without the increase.” TABOR §20(3)(b)(iii). For 2018, the first year of collection of the recreation tax, the notice estimated the dollar amount of the increase to be \$575,000. It estimated 2018 fiscal year spending without the increase to be \$33,470,000. A copy of the notice is attached.

Currently, the Finance Department estimates that 2018 revenues from the recreation tax will be \$908,900, and that 2018 fiscal year spending will be \$37,903,000, both in excess of the estimates in the ballot issue notice. The actual amounts cannot be confirmed until after the end of the year.

TABOR includes a specific provision addressing amounts in excess of estimates contained in the ballot issue notice, which states as follows:

Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b)(iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b)(iv). Ballot titles for tax or bonded debt increases shall begin, "SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?"

TABOR §3(c)(emphasis added). Thus, absent “later voter approval,” this provision appears to require two actions to be taken if a tax increase or fiscal year spending exceeds an estimate in the ballot issue notice: (1) a refund of the excess revenue collected; and (2) a rate reduction in proportion to the excess revenue collected. These issues are discussed in turn.

Refund of Excess Revenue. While there is currently pending litigation regarding TABOR’s refund language (discussed below), Section (3)(c) of TABOR has generally been interpreted to require, in this instance, that the City refund amounts collected in 2018 in excess of \$575,000, unless the voters approve another ballot issue allowing the City to retain the excess revenue.¹ If the City Council determines to make a refund, the following are some pertinent points:

- TABOR Section 3(c) requires excess tax revenue to be refunded “in the next fiscal year.” For the recreation tax, this means before December 31, 2019.
- If excess tax revenue is not refunded by the end of the next fiscal year, TABOR Section 1 authorizes enforcement actions to force the refund of “[r]evenue collected, kept, or spent illegally since four full fiscal years before the suit is filed.” In other words, if the City did not obtain voter approval to retain the excess revenue collected in 2018 and failed to refund that revenue by December 31, 2019, a plaintiff with standing could bring a suit to force the refund at any time prior to December 31, 2023.
- Section 1 of TABOR permits municipalities to use “any reasonable method” to refund excess revenue, and provides that “[r]efunds need not be proportional when prior payments are impractical to identify or return.”

¹ TABOR does not prohibit the receipt of excess revenue in the first place; that is, the City is not required to reduce the tax rate or take other action to forestall the receipt of excess revenue in the first year, though it could do so if desired in an effort to keep collections under the estimate.

- Colorado Revised Statutes (C.R.S.) Section 39-1-111.5 expressly authorizes a temporary mill levy reduction or temporary property tax credit in order to effect a TABOR refund. This section also includes a legislative declaration that the procedures set forth therein “shall be deemed to be a reasonable method for effecting refunds in accordance with [TABOR].” If desired, the refund method authorized by this statute can be used to refund excess revenue attributable to sales and use tax.
- While there is no reported appellate case specifically holding that excess sales and use tax revenue may be refunded through utility bill credits, this method has been used at the state and local level without challenge. Further, we do not think a utility bill credit would face any different proportionality issue than use of a temporary property tax credit or mill levy reduction. If a utility bill credit is used, the legislative declaration in C.R.S. §39-1-111.5 would not apply but, as noted above, TABOR itself authorizes any reasonable refund method, and states refunds need not be proportional when prior payments are impractical to identify or return, which is the case for many retail sales tax transactions.
- Interest is not required to be paid on the excess revenue collected *unless* such revenue is not refunded in the next fiscal year *and* suit is brought to force a refund, in which case the excess revenue will be ordered refunded with 10% annual simple interest from the “initial conduct” (i.e., December 31, 2019). See TABOR §§ 1 and 3(c).

Rate Reduction. As noted above, TABOR Section 3(c) also states that if a tax increase exceeds an estimate in the ballot issue notice for the same fiscal year, “the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess...”. Thus, absent “later voter approval,” this language appears to require the City reduce the rate of the tax on a going forward basis if revenues exceed estimates for the first full year of collection.

TABOR is not clear when the rate reduction must be applied. In a legal memo addressing the State’s obligations with respect to excess marijuana taxes, the Office of Legislative Legal Services interpreted TABOR to require the rate reduction to begin with the next fiscal year—i.e. beginning January 1, 2019 as applied to the City’s recreation tax. TABOR is also unclear on how to reduce the rate “in proportion to the combined dollar excess.” This language could mean that the amount of combined dollar excess is compared to the amounts actually brought in, or, alternatively, compared to the estimated tax increase, to determine the percentage by which the rate would then be reduced. Finally, it is not clear how “de-Brucing” language in a ballot issue may affect the rate reduction requirement.

The Colorado appellate courts have not issued an opinion on these issues, though there is currently pending litigation in this area (discussed below). This dearth of case law is due in part to the limited instances of revenues exceeding estimates and that where this has occurred, jurisdictions have obtained later voter approval to retain revenues generated by the previously approved tax. However, we understand several jurisdictions are currently facing this issue because of strong revenue growth.

Later Voter Approval. As noted above, TABOR Section 3(c) requires a rate reduction and refund, “except by later voter approval.” Thus, the City could refer a ballot issue to the voters requesting approval to retain excess revenue and/or maintain the previously approved tax rate. While it may be

possible to put such a question on the November 2018 ballot, it is not certain whether the timing of such a question constitutes “later voter approval” because the first year of tax collection is not over, and thus the refund liability has not yet accrued. However, subject to this potential risk, the City could refer a ballot issue in 2018 or, alternatively, do so in November 2019. If a question in either year did not pass, the City would have until December 31, 2019 to effect a refund without the risk of liability for interest.

Pending Litigation. TABOR’s refund and rate reduction provisions were recently addressed in an El Paso County District Court case styled as Bruce v. El Paso County, Case No. 2017CV156. In this case, Douglas Bruce alleged that the County violated TABOR by collecting and retaining, year over year, sales tax revenues in excess of the amount estimated when the tax was approved in 2012.² In his Complaint, Mr. Bruce demanded a reduction in the rate of the tax and a refund of amounts collected each year in excess of the estimate, plus interest.

In its Order granting the County’s motion to dismiss, the trial court ruled that the “de-Brucing” language in the County ballot issue exempted the tax from TABOR’s restrictions, including the “except by later approval” language contained within Section (3)(c), effectively holding that the County did not have a refund obligation for even the first year of collection, or any rate reduction obligation. This Order (copy enclosed) is only a district court decision, and thus would not be binding, for example, on a Boulder County District Court, and the decision differs from some other interpretations of the “later voter approval” requirement. Nonetheless, the decision holds that “de-Brucing” language, similar to that contained in the City’s recreation tax question, eliminates any refund or rate reduction obligation. We understand Mr. Bruce has appealed the case and may be seeking direct review by the Colorado Supreme Court. Thus, it is possible this case will generate appellate law interpreting the rate reduction and refund obligations the City may face regarding the recreation tax.

Summary of Options. To assist your June 15 discussion, the following is a summary of potential options for addressing these issues:

- Direct a refund of 2018 excess revenue in 2019 and reduce the tax rate.
- Refer a ballot issue to the voters requesting approval to keep all revenues from the tax and to continue the tax at the 0.15% rate.
- Direct action be taken in 2018 to avoid collection of revenues in excess of the estimate.
- Take a wait-and-see approach and defer decisions on this issue until the first or second quarter of 2019, by which time there may be further developments in the Bruce case. At that time the City will also have actual revenue amounts for the 2018 fiscal year.

We will be available at your June 15 meeting to further discuss these issues.

² Specifically, the County in 2012 voted to increase the sales tax rate 0.23% and estimated the dollar amount of the increase at \$17 million. Mr. Bruce alleged the County received about \$875,000 more than the estimated amount and that under TABOR Section 3(c), the County was obligated to refunds \$875,000 each year, plus 10% interest.

CITY OF LOUISVILLE

TO: ALL REGISTERED VOTERS

NOTICE OF ELECTION TO INCREASE TAXES AND DEBT ON A REFERRED MEASURE

CITY OF LOUISVILLE
BOULDER COUNTY, COLORADO

ELECTION DATE: TUESDAY, NOVEMBER 8, 2016
ELECTION HOURS: 7:00 A.M. TO 7:00 P.M.

LOCAL ELECTION OFFICE ADDRESS AND TELEPHONE NUMBER:

BOULDER COUNTY CLERK & RECORDER
ELECTIONS DIVISION
1750 33RD STREET, SUITE 200
BOULDER, CO 80301
TELEPHONE: 303-413-7740

CITY OF LOUISVILLE, COLORADO
DESIGNATED ELECTION OFFICIAL
MEREDYTH MUTH, CITY CLERK
749 MAIN STREET
LOUISVILLE, CO 80027
TELEPHONE: 303-335-4536

CITY OF LOUISVILLE BALLOT ISSUE 2A

BALLOT TITLE AND TEXT:

SHALL CITY OF LOUISVILLE DEBT BE INCREASED \$28,600,000, WITH A REPAYMENT COST OF UP TO \$45,400,000; AND SHALL CITY OF LOUISVILLE TAXES BE INCREASED UP TO \$1,820,000 ANNUALLY, OR BY SUCH LESSER AMOUNT AS MAY BE NECESSARY TO PAY SUCH DEBT FROM AN ADDITIONAL AD VALOREM PROPERTY TAX MILL LEVY NOT TO EXCEED 3.350 MILLS TO BE IMPOSED FOR A PERIOD NOT TO EXCEED TWENTY FIVE YEARS; SUCH DEBT AND TAXES TO BE FOR THE PURPOSE OF CONSTRUCTING, EXPANDING AND RENOVATING THE LOUISVILLE RECREATION/SENIOR CENTER AND THE POOL FACILITIES AT MEMORY SQUARE PARK, TO INCLUDE ALL NECESSARY LAND, EQUIPMENT, FURNISHINGS, IMPROVEMENTS AND INCIDENTALS FOR SUCH FACILITIES; SUCH DEBT TO BE EVIDENCED BY THE ISSUANCE OF BONDS OR BONDS ISSUED TO REFUND SUCH BONDS; SUCH BONDS TO BE SOLD IN ONE SERIES OR MORE IN AN AGGREGATE AMOUNT NOT TO EXCEED THE MAXIMUM AUTHORIZED PRINCIPAL AMOUNT AND REPAYMENT COSTS, ON TERMS AND CONDITIONS AS THE CITY COUNCIL MAY DETERMINE, INCLUDING PROVISIONS FOR THE REDEMPTION OF THE BONDS PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND TAXES, AND ANY INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

CITY OF LOUISVILLE BALLOT ISSUE 2B

BALLOT TITLE AND TEXT:

SHALL CITY OF LOUISVILLE TAXES BE INCREASED \$575,000 IN 2018 AND THEN ANNUALLY BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED THEREAFTER FROM THE LEVY OF AN ADDITIONAL SALES AND USE TAX OF 0.15 PERCENT BEGINNING JANUARY 1, 2018 AND CONTINUING THEREAFTER; WITH SUCH TAX TO BE IMPOSED ONLY IF REFERRED MEASURE 2A, REFERRED TO REGISTERED ELECTORS OF THE CITY AT THE NOVEMBER 8, 2016, ELECTION, IS APPROVED BY A MAJORITY OF SUCH ELECTORS; WITH THE NET PROCEEDS OF SUCH SALES AND USE TAX TO BE COLLECTED, RETAINED AND SPENT FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK; AND SHALL THE CITY BE PERMITTED TO COLLECT, RETAIN AND EXPEND ALL REVENUES DERIVED FROM SUCH SALES AND USE TAX AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

Fiscal Information

Total City Fiscal Year Spending

Fiscal Year

2016 (estimated)	\$ 32,410,000
2015 (actual)	\$ 27,973,744
2014 (actual)	\$ 25,247,247
2013 (actual)	\$ 24,439,278
2012 (actual)	\$ 23,772,123

Overall percentage change from 2012 to 2016
36.3%

Overall dollar change from 2012 to 2016
\$ 8,637,877

Proposed Tax Increase

City Estimate of the Maximum Dollar Amount of the Proposed Tax Increase for Fiscal Year 2017 (the First Full Fiscal Year of the Proposed Tax Increase):
BALLOT ISSUE NO. 2A: \$ 1,820,000

City Estimate of 2017 Fiscal Year Spending*
Without Proposed Tax Increase: \$ 31,425,000

City Estimate of the Maximum Dollar Amount of the Proposed Tax Increase for Fiscal Year 2018 (the First Full Fiscal Year of the Proposed Tax Increase):
BALLOT ISSUE NO. 2B: \$ 575,000

City Estimate of 2018 Fiscal Year Spending*
Without Proposed Tax Increase: \$ 33,470,000

*Fiscal year spending without the proposed tax increases does not include proceeds of bonded debt, lease purchase

CITY OF LOUISVILLE

agreements or other borrowings which may occur in such fiscal years.

Information on City's Proposed Debt

BALLOT ISSUE NO. 2A:

Principal Amount of Proposed Bonds:
Not to exceed \$ 28,600,000

Maximum Annual City Repayment Cost:
Not to exceed \$ 1,820,000

Total City Repayment Cost:
Not to exceed \$ 45,400,000

Information on City's Current Debt *

Principal Amount Outstanding Debt:\$ 2,635,000
Maximum Annual Repayment Cost:\$ 497,900
Remaining Total Repayment Cost: \$ 2,937,677
(All amounts @ 09/23/2016)

*Excluded from debt are enterprise and annual appropriation obligations.

Summary of Written Comments FOR Ballot Issue No. 2A:

No comments were filed by the constitutional deadline.

Summary of Written Comments AGAINST Ballot Issue No. 2A:

No comments were filed by the constitutional deadline.

Summary of Written Comments FOR Ballot Issue No. 2B:

No comments were filed by the constitutional deadline.

Summary of Written Comments AGAINST Ballot Issue No. 2B:

No comments were filed by the constitutional deadline.

El Paso County, CO, District Court Court Address: P.O. Box 2980 270 S. Tejon Colorado Springs, CO 80901-2980 Phone Number: (719) 452-5275	DATE FILED: March 8, 2018 CASE NUMBER: 2017CV156 ▲ COURT USE ONLY ▲
DOUGLAS BRUCE PLAINTIFF vs EL PASO COUNTY DEFENDANT	Case Number: 2017CV156 Division 3, Courtroom S406
ORDER RE: DEFENDANT'S MOTION TO DISMISS PURSUANT TO C.R.C.P 12(b)(5)	

I. JURISDICTION

Jurisdiction is proper in the El Paso County District Court. Although Plaintiff has failed to comply with C.R.S. § 30-11-105, which provides that all proceedings against a Colorado county must be brought against “The board of county commissioners of the county”. The Board of County Commissioners of the County of El Paso waives any objection it has to jurisdiction.

II. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief can be granted, made pursuant to Rule 12(b)(5) of the Colorado Rules of Civil Procedure, may be granted if the plaintiff’s factual allegations cannot support a claim as a matter of law. Asphalt Specialties, Co. v. City of Commerce City, 218 P.3d 741 (Colo. App. 2009). In reviewing such a motion, a court must accept all

material facts in the complaint as true and view all allegations in the light most favorable to the plaintiff.

The Plaintiff has requested oral argument and a hearing because “ facts and law are in serious dispute”. The request is denied. For purposes of this Motion, all material facts in the Complaint are assumed truthful and the question before the Court is whether the allegations can support a claim as a matter of law.

III STATEMENT OF THE CASE AND ALLEGATIONS

On September 6, 2012, the Board of El Paso County Commissioners passed a resolution to refer a measure for the November 2012 election seeking voter approval to increase El Paso County’s sales and use tax rate to address certain public safety needs of the El Paso County Sheriff’s Office. The measure was designated “1A” by the El Paso County Clerk and Recorder’s Office.

Pursuant to the Taxpayers Bill of Rights (TABOR), a Notice of Election was mailed to all registered voters in El Paso County which contained information regarding measure 1A. El Paso County voters approved measure 1A. Starting in 2013, El Paso County has been collecting revenues from 1A for the purposes stated within the ballot measure.

The Plaintiff alleges that language in TABOR requires the county to refund to the taxpayers certain calculated revenues that exceed the estimate of revenues per TABOR. The Defendant asserts that the language of the measure preempts the statutory provision for reimbursement because the measure included authority from the voters to keep and use all revenues collected.

IV CONCLUSIONS OF LAW AND ORDER

Under Colo. Const. art X, § 20(3)(b), when proposing a tax increase, a county must mail an election notice to all registered voters in its jurisdiction with content requirements as set forth in the same section. Pursuant to Colo. Const. art X, § 20(3)(b)(iii), the county must provide, for the first full fiscal year of the increase, estimates of the maximum dollar amount of the tax increase and of the fiscal year spending without the increase. Colo. Const. art X, § 20(3)(c) states that except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b)(iii) for the same fiscal year, the tax increase is thereafter reduced and refunded.

The Colorado Supreme Court has identified three situations in which the voters must approve the collection, retention or expenditure of an increase in government revenue, one of which exists when such revenue exceeds the election notice estimate. *City of Aurora v. Acosta*, 892 P.2d 264, 268 (Colo. 1995). Because voter approval to allow a variation from the otherwise applicable limits is mandated by TABOR, any interpretation of TABOR which would limit the right of the electorate to vote on tax or spending proposals is not favored. *Havens v. Bd. of County Com'rs of County of Archuleta*, 924 P.2d 517, 520 (Colo. 1996).

Defendant's measure 1A contained the following language:

SHALL EL PASO COUNTY TAXES BE INCREASED BY
APPROXIMATELY \$17 MILLION ANNUALLY TO DIRECTLY FUND THE
URGENT PUBLIC SAFETY NEEDS IDENTIFIED BY EL PASO COUNTY
SHERIFF TERRY MAKETA, THE CHIEF LAW ENFORCEMENT OFFICIAL

SERVING ALL RESIDENTS OF THE CITIES, TOWNS AND UNINCORPORATED AREAS WITHIN THE BOUNDARIES OF EL PASO COUNTY, AS CRITICAL TO PERFORMING HIS STATUTORY OBLIGATIONS TO ALL EL PASO COUNTY RESIDENTS, BY INCREASING THE COUNTY'S SALES AND USE TAX RATE BY TWENTY-THREE HUNDREDTHS OF ONE CENT (\$0.0023) PER DOLLAR PURSUANT TO PART 1 OF ARTICLE 2 OF TITLE 29, COLORADO REVISED STATUTES;

...

WITH ALL REVENUES GENERATED AND THE EARNINGS ON SUCH REVENUE TO BE COLLECTED AND SPENT EACH YEAR WITHOUT LIMITATION BY THE REVENUE AND SPENDING LIMITS OF, AND WITHOUT AFFECTING THE COUNTY'S ABILITY TO COLLECT AND SPEND OTHER REVENUES OR FUNDS UNDER, ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION...?

The Court finds that the language in measure 1A specifically asks the voters whether taxes shall be increased and whether all revenues generated from such tax and the earnings thereon may be exempted from the revenue and spending limits of TABOR. In approving measure 1A, El Paso County voters voted to lift all revenue and spending limitations contained in TABOR from the revenue generated by the tax increase.

The Colorado Supreme Court has consistently recognized the power vested in the voters to direct government spending under TABOR. It has stated that: "[t]he will of the electors, when fully and freely expressed, will not be defeated by a strict and technical construction of the law". *Bickel v. City of Boulder*, 885 P.2d

215, 226 (Colo. 1994). The Colorado Supreme Court also acknowledges that governments must be able to rely on the language and outcome of ballot issues in order to function, explaining that “[r]eliance on the ballot language is especially important for these ballot issues because article X, section 20 relies on voters to make important financial decisions. The issues are often complex... and article X, section 20 provides minimal guidance to taxing authorities seeking voter approval. To make this form of ‘direct democracy’ work, districts must be able to rely on the language of the ballot issues.” *Mesa Cty. Bd. of Cty. Comm'rs v. State*, 203 P.3d 519, 534 (Colo. 2009).

The Defendant has relied on the text of measure 1A as approved by the voters, which states that 1A is exempt from spending and revenue limits of TABOR. Importantly, the text of measure 1A clearly identifies “all revenue” being exempt from TABOR. This text applies to the first collection under the measure and applies to future years as well. By approving this text, the voters specifically removed measure 1A from TABOR’s restrictions, including the “[e]xcept by later approval...” language contained within (3)(c). It is contradictory that the voters would approve language to except TABOR, only to then be faced with the possibility of additional ballot questions thereafter on the exact same issue.

Accordingly, the Court grants the Defendant’s Motion to Dismiss and Plaintiff’s Complaint is hereby dismissed with prejudice.

Dated this 8th day of March, 2018

BY THE COURT



Thomas K. Kane
District Court Judge

CERTIFICATE OF MAILING

The undersigned hereby certifies that on March 8, 2018 a true and correct copy of the foregoing order was filed via US mail to:

Lori Seago, #29458
Senior Assistant County Attorney
200 S. Cascade
Colorado Springs, CO 80903

Steven Klaffky, #44836
Assistant County Attorney
200 S. Cascade
Colorado Springs, CO 80903

Douglas Bruce
Box 26018
Colorado Springs, CO 80936

**SUBJECT: PROPOSED BALLOT ISSUE LANGUAGE – CITY RECREATION
SALES AND USE TAX – EXCESS REVENUE OBLIGATIONS
UNDER THE TAXPAYER’S BILL OF RIGHTS (TABOR)**

DATE: APRIL 1, 2019

PRESENTED BY: NICK COTTON-BAEZ, CITY ATTORNEY’S OFFICE

SUMMARY:

At its February 18, 2019 meeting, the Finance Committee discussed its options under TABOR for either retaining or refunding revenues received in excess of the estimate for the first year of its 0.15% sales and use tax increase approved by the voters at the 2016 election, and for continuing to collect the tax at the established rate.

At that meeting, the Finance Committee elected to recommend to the City Council to refer to the voters a TABOR ballot issue that, if passed, would permit the City to retain revenues received in excess of the estimate for the first year of the tax, and to continue to collect sales and use tax at the rate approved by the voters at the 2016 election.

The Finance Committee directed the City Attorney’s office to collect examples of ballot language from other municipalities, and to prepare proposed ballot language for the City’s retention of the excess revenues and previously approved rate.

The attached document contains examples of ballot language used by other municipalities to retain excess revenues and previously-approved tax rates. In addition, as directed, the City Attorney’s office has prepared proposed ballot language for the Committee’s review. The City Attorney’s office also prepared alternative ballot language in case the City Council should decide to refund excess revenues and to ask the voters to permit the City to retain the rate approved at the 2016 election.

RECOMMENDATION:

Staff is seeking comments on the proposed ballot language.

ATTACHMENT(S):

1. Proposed Ballot Issue Language and Examples

PROPOSED BALLOT ISSUE LANGUAGE AND EXAMPLES

RECOMMENDED CITY OF LOUISVILLE BALLOT ISSUE LANGUAGE (NO REFUND; RETAIN RATE):

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAXES, SHALL THE CITY OF LOUISVILLE BE PERMITTED TO KEEP REVENUES FROM THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, WHETHER OR NOT SUCH REVENUES HAVE ALREADY BEEN SPENT, AND CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK, WITHOUT REFUNDING TO THE TAXPAYERS THE AMOUNT THAT EXCEEDED THE REVENUE ESTIMATES IN THE ELECTION NOTICE MAILED TO VOTERS IN 2016?

ALTERNATIVE CITY OF LOUISVILLE BALLOT ISSUE LANGUAGE (REFUND EXCESS; RETAIN RATE):

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAXES, SHALL THE CITY OF LOUISVILLE REFUND TO THE TAXPAYERS \$270,795 IN EXCESS REVENUE RECEIVED BY THE CITY IN 2018 FROM THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, AND BE PERMITTED TO CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK?

CITY OF BOULDER EXAMPLE:

**City of Boulder Ballot Issue 2D -
Authorize Retention of All
Sugar-Sweetened Beverages Tax
Revenue**

WITHOUT RAISING TAXES MAY THE CITY KEEP ALL REVENUES FROM THE 2016 VOTER-APPROVED SUGAR-SWEETENED BEVERAGE PRODUCT DISTRIBUTION EXCISE TAX, AND CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR THE HEALTH EQUITY-RELATED PURPOSES PREVIOUSLY APPROVED BY THE VOTERS, WITHOUT REFUNDING TO DISTRIBUTORS THE AMOUNT THAT EXCEEDED THE REVENUE ESTIMATES APPROVED BY VOTERS IN 2016?

FOR THE MEASURE	<input type="radio"/>	AGAINST THE MEASURE	<input type="radio"/>
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FORT COLLINS EXAMPLE:

MAY THE CITY KEEP ALL OF THE REVENUES THAT IT HAS COLLECTED FROM THE CITY'S "KEEP FORT COLLINS GREAT" .85% SALES AND USE TAX APPROVED BY THE VOTERS IN 2010, WHETHER OR NOT SUCH

REVENUES HAVE ALREADY BEEN SPENT, AND CONTINUE TO COLLECT THE TAX AT THE .85% RATE AND SPEND ALL OF THE REVENUES IN THE FOLLOWING WAYS DIRECTED BY THE VOTERS IN 2010:

33% FOR STREET MAINTENANCE AND REPAIR;

17% FOR OTHER STREET AND TRANSPORTATION NEEDS;

17% FOR POLICE SERVICES;

11% FOR FIRE PROTECTION AND OTHER EMERGENCY SERVICES;

11% FOR PARKS MAINTENANCE AND RECREATION SERVICES; AND

11% FOR COMMUNITY PRIORITIES OTHER THAN THOSE LISTED ABOVE, AS DETERMINED BY THE CITY COUNCIL;

WITHOUT REFUNDING ANY AMOUNT FOR EXCEEDING THE REVENUE ESTIMATES IN THE ELECTION NOTICE MAILED TO VOTERS IN 2010?

MANITOU SPRINGS MARIJUANA EXCISE TAX EXAMPLE:

SHALL THE CITY OF MANITOU SPRINGS, COLORADO BE PERMITTED TO RETAIN AND EXPEND \$57,993 IN EXCESS REVENUE RECEIVED BY THE CITY FROM THE CITY'S SPECIAL RETAIL MARIJUANA SALES TAX AS ORIGINALLY APPROVED BY THE VOTERS ON NOVEMBER 5, 2013, WHICH EXCESS REVENUE WOULD OTHERWISE BE REFUNDED BY A TEMPORARY REDUCTION IN THE CITY'S SPECIAL RETAIL MARIJUANA TAX, PURSUANT TO THE REQUIREMENTS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?



Kathleen M. Kelly
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kathleen@kellypc.com
nick@kellypc.com

MEMORANDUM

TO: Finance Committee
City of Louisville

FROM: Kathleen M. Kelly /s/
Nicolas D. Cotton-Baez /s/

DATE: May 17, 2019

RE: Bond Counsel Revisions to Proposed Excess Tax Revenue
TABOR Ballot Issue Language

At the April 1st meeting, the Finance Committee reviewed two alternative TABOR ballot issues. The first alternative would seek voter approval to retain excess revenues received from the 2016 sales and use tax increase and retain the 0.15% rate increase. The second alternative would seek voter approval to retain the 0.15% rate increase, but not retain revenues in excess of the revenue estimates set forth in the 2016 TABOR notice.

The Finance Committee directed the City Attorney's office to confer with the City's bond counsel, Dee Wisor, to confirm the proposed ballot issue alternatives would meet City objectives and TABOR requirements.

Mr. Wisor recommended the following revisions to the ballot issue alternatives proposed by the City Attorney's office (words added are underlined; words deleted are ~~stricken through~~):

No Refund; Retain Rate:

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT ~~TAXES~~ TAX RATE, SHALL THE CITY OF LOUISVILLE ~~BE PERMITTED TO KEEP REVENUES THAT OTHERWISE WOULD BE REFUNDED FOR EXCEEDING ESTIMATES INCLUDED IN THE ELECTION NOTICE MAILED TO VOTERS FOR~~ FROM THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, WHETHER OR NOT SUCH REVENUES HAVE ALREADY BEEN SPENT, AND CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES

~~COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK, WITHOUT REFUNDING TO THE TAXPAYERS THE AMOUNT THAT EXCEEDED THE REVENUE ESTIMATES IN THE ELECTION NOTICE MAILED TO VOTERS IN 2016?~~

Refund Excess Revenue; Retain Rate:

~~WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAXES TAX RATE, SHALL THE CITY OF LOUISVILLE REFUND TO THE TAXPAYERS \$270,795 IN EXCESS REVENUE RECEIVED BY THE CITY IN 2018 EXCEEDING ESTIMATES INCLUDED IN THE ELECTION NOTICE MAILED TO VOTERS FOR FROM THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, AND BE PERMITTED TO CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK?~~

During our discussions with Mr. Wisor, it became clear the amount of potential refund is larger than had been previously discussed. Absent later voter approval, TABOR requires a refund if either the revenue generated by the new tax exceeded the estimate (\$575,000) or the City's total 2018 fiscal year spending without the tax increase exceeded the amount in the TABOR notice (\$33,470,000), and requires the tax rate be reduced in future years in proportion to the combined dollar excess. We now know that revenues exceeded both estimates and Mr. Wisor has advised refunds are due for both. The Office of Legislative Legal Services ("OLLS") has interpreted the total amount to be refunded when both estimates are exceeded is limited to the total tax revenues collected for the tax (in this case, the 0.15% increase). Mr. Wisor thought this interpretation by OLLS made sense, but cautioned that interpretation has not been judicially tested.

Therefore, should the voters not approve the City retaining the revenues exceeding the estimates (plural) included in the election notice mailed to voters in connection with this tax increase, the City will need to refund the revenue collected above the \$575,000 estimate for the new tax (\$270,795) plus the amount the City's 2018 fiscal year spending without the tax increase exceeded the estimate in the TABOR notice (\$4,662,787), but the amount of refund should be capped at the total revenue collected for this 0.15% tax in 2018 (\$845,795).

City staff recommends the Finance Committee support City Council referring the first proposed ballot issue alternative to the voters, which provides no refund and retains the 0.15% rate increase. Final proposed ballot language for both alternatives is attached to this memorandum.

Please let us know if you have questions.

cc: Heather Balser, City Manager
Kevin Watson, Finance Director

FINAL PROPOSED BALLOT ISSUE LANGUAGE

NO REFUND; RETAIN RATE:

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAX RATE, MAY THE CITY OF LOUISVILLE KEEP REVENUES THAT OTHERWISE WOULD BE REFUNDED FOR EXCEEDING ESTIMATES INCLUDED IN THE ELECTION NOTICE MAILED TO VOTERS FOR THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, WHETHER OR NOT SUCH REVENUES HAVE ALREADY BEEN SPENT, AND CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK?

ALTERNATIVE CITY OF LOUISVILLE BALLOT ISSUE LANGUAGE (REFUND EXCESS; RETAIN RATE):

WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAX RATE, SHALL THE CITY OF LOUISVILLE REFUND TO THE TAXPAYERS REVENUE RECEIVED BY THE CITY IN 2018 EXCEEDING ESTIMATES INCLUDED IN THE ELECTION NOTICE MAILED TO VOTERS FOR THE 2016 VOTER-APPROVED 0.15 PERCENT INCREASE IN SALES AND USE TAX, AND BE PERMITTED TO CONTINUE TO COLLECT THE TAX AT THE PREVIOUSLY APPROVED RATE, AND SPEND ALL REVENUES COLLECTED FOR OPERATING AND MAINTAINING THE LOUISVILLE RECREATION/SENIOR CENTER AND POOL FACILITIES AT MEMORY SQUARE PARK?

City of Louisville Colorado Recreation Advisory Board 2019 Work Plan

Topics will be discussed in the quarter which they are listed. Items that are not complete will roll to the next quarter.

Quarterly Review: material exceptions will be discussed at monthly RAB meetings

- Financial Statements
- Enterprise Dashboards for Golf and Recreation Center
- Recreation Center attendance stats

First Quarter

- ✓ Board Elections
- ✓ Discuss RAB 2019 Work plan
- ✓ Recreation Center Grand Opening
- ✓ Recreation Center budget presentation
- ✓ Review Golf Strategic Plan
- ✓ Review Fit Zone Survey data
- Tour Recreation Center and Memory Square Pool
- ✓ Tour Coal Creek Golf Course
- ✓ Review Survey Tool & Customer Satisfaction Survey
- ✓ Construction project wrap up summary – Punch list items
- ✓ Review Memory Square Hours
- Review Business and Strategic Plan for renovated/Updated Recreation Center (Oldest New Recreation Center)
- Review Gap Analysis of Recreation and Pool activities and classes
- Review long term plan for Senior Center programming
- Review Marketing Plan
- Discuss Sales Tax Policy

Second Quarter

- Continue 1Q items not completed
- Review Recreation Proposed Capital projects for 2019-2024
- Review Recreation Center Biennial Operating Budget for 2019-2020
- Review Golf Enterprise Budget for 2019-2020 including funding of Renewal and Replacement of Equipment
- Review Proposed allocation of new Sales Tax revenues for 2018 and 2019-2020
- Begin discussion of the financial structure of the Recreation operations considering both Enterprise and Auxiliary models
- Evaluate finance policies including fees and reserves
- Review Rec Programming Plan
- ✓ Marketing & Branding
- ✓ Review our Senior Services

Third Quarter

- Continue 2Q items not completed

Fourth Quarter

- 3Q items not completed
- Review 2020/21 Budget
- Review how we are serving our youth population
- Age Well Plan Final
- Discuss Rec Center Strategic Plan