



Legislation Text

File #: 20-220, **Version:** 1

A resolution submitting to the registered qualified electors of the City of Colorado Springs, Colorado, at the coordinated election conducted by mail ballot to be held on Tuesday, November 3, 2020, the question of retaining and spending all revenues received in 2019 and 2020, and resetting the revenue and spending limitations for later years based thereon, as voter approved revenue changes; providing for the form of the ballot title; providing for certain matters with respect to the election; and providing the effective date of this resolution.

Presenter:

Mayor John Suthers
Wynetta Massey, City Attorney
Charae McDaniel, Chief Financial Officer

Summary:

This Resolution refers a ballot question to the qualified registered electors of the City at the November 3, 2020 coordinated election which also constitutes a special municipal election. The ballot question asks the voters whether the City may retain and spend all revenues received in 2019 and 2020, which in 2019 exceeded, and which in 2020 might exceed, amounts otherwise allowed to be retained and spent under the City Charter § 7-90 and Colorado Constitution Article X, § 20, known as the Taxpayers' Bill of Rights or "TABOR". It would also reset the revenue and spending limitations for later years based thereon, as voter-approved revenue changes. The Resolution also directs City staff to do all things required in connection with having the ballot measure presented to the voters.

Background:

Under Charter § 7-90 (g), the City's authorized change in fiscal year spending and property tax revenues are both limited to inflation plus City growth, and any voter approved changes. Under Colo. Const. Art. X, § 20 (7) (b), City spending is similarly limited to inflation plus local growth and any voter approved revenue changes. The Finance Department has determined that the City's 2019 revenues have exceeded or will be determined to exceed these limitations by approximately \$1.9 million, and that there is a potential for property tax revenues to exceed the property tax revenue limitation in 2020 due to the 2019 reassessment, unless the voters approve the retention and spending of such revenues.

Due to the economic disruptions caused by the COVID-19 Pandemic, it is anticipated that City revenues and sales tax revenues in particular, will be down substantially for 2020, and likely substantially below the revenues that would be allowed to be retained and spent. However, because under TABOR, the following year's revenue and spending limitations are based upon the prior year's actual revenues or allowed revenues, whichever is lower, plus growth and inflation, the TABOR limits would be effectively lowered below the 2019 level and possibly prior levels. This effect during periods of economic recession has been called "ratcheting down".

The Resolution before City Council would present a question to the voters, allowing the City to retain and spend the 2019 and 2020 revenues, as well as resetting the revenue limitations for 2021 and later years based upon the higher of the 2019 or 2020 revenues.

There is no tax increase of any kind associated with this ballot measure.

Update to Background: On July 27, 2020, City Council reviewed two alternative versions of the Resolution and a majority thereof requested that the version labeled Alternate 1 should be presented at the City Council's meeting of August 11, 2020.

Additionally, in response to a question posed by a Councilmember, the retention of excess Fiscal Year 2019 revenues may not be postponed for a public vote in April, 2021. This is because TABOR requires refund of excess revenues "in the next fiscal year" unless the voters approve of the revenue change. Art. X, § 20 (7)(d), Colo. Const. If the voters do not do so, the excess revenues must be refunded by December 31, 2020. Should the City fail to make the refund by that deadline, it would be subject to a taxpayer lawsuit under which it would be liable for the refunding of the excess together with interest at 10% and attorney fees and costs. Art. X, § 20 (1), Colo. Const.

Voter approval of the changes to the TABOR revenue base will substantially affect the 2021 budget to be considered and approved by City Council late in 2020. Consequently, it is strongly recommended by City staff that this part of the ballot question also be presented to the voters at the November 3, 2020 election.

Previous Council Action:

The concept of asking the voters for authorization to retain and spend all 2019 and 2020 revenues had been discussed by Mayor Suthers and City Council on May 12, 2020.

Note: This matter has been discussed at City Council Work Sessions on May 22, 2020 and June 22, 2020. Two revised Resolutions identified as Alternate 1 and Alternate 2 were presented for Council consideration on July 27, 2020 based upon these discussions. At that time, a majority of the Council asked for the version labeled Alternate 1 to be presented of Council consideration on August 11, 2020.

Financial Implications:

If the Resolution is passed by Council and the measure approved by the voters, the City will be permitted to retain and expend the approximately \$1.9 million for 2019 and any excess total or property tax revenues in 2020, and then beginning in 2021, the TABOR "caps" will be based upon the 2019 or 2020 revenues, whichever is higher. Otherwise, the City will be required to refund the \$1.9 Million, See Charter § 7-90 (g), and due to the anticipated reduction in revenues in 2020, TABOR's "ratchet down effect" would likely reduce the City's TABOR caps for 2021 and later years. The Charter may also permit the excess revenue funds from 2019 to be applied to reduce taxes or bonded debt.

City Council Appointed Board/Commission/Committee Recommendation:

N/A

Stakeholder Process:

N/A

Alternatives:

The City could refund the 2019 excess revenue amount to the taxpayers. The Charter may also permit the funds to be applied to reduce taxes or bonded debt.

Proposed Motion:

Move to approve - A resolution submitting to the registered qualified electors of the City of Colorado Springs, Colorado, at the coordinated election conducted by mail ballot to be held on Tuesday, November 3, 2020, the question of retaining and spending all revenues received in 2019 and 2020, and resetting the revenue and spending limitations for later years based thereon, as voter approved revenue changes; providing for the form of the ballot title; providing for certain matters with respect to the election; and providing the effective date of this resolution.

N/A