



## Agenda Memorandum

**Agenda Date:** 8/16/2016

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**Item #:** 13. **File #:** ORD 2016-020

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**To:** Honorable Mayor and Members of Town Council

**From:** David L. Corliss, Town Manager

**Ordinance Submitting to the Electorate at the Regular Election on November 8, 2016 the Question of Authorizing the Retention and Expenditure of 2015 Excess TABOR Revenues for Police, Fire, Emergency Medical Services, Transportation, Parks, Recreation, Trails and Open Space Purposes (First Reading)**

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### Executive Summary

Town Council in 2014 directed staff to manage Town finances to keep revenues within Colorado Taxpayers Bill of Rights (TABOR) limits to the extent possible. Staff has done so since that time; yet, the Town ended 2015 with a TABOR surplus of \$714,580.

Because 2015 revenues exceeded TABOR limits, Town Council has until the end of 2016 to either: 1) Refund the surplus, or 2) Ask voters to keep the money to spend on local services.

Town Council discussed these options May 3 and June 21. (Additional information from Council's prior TABOR discussions is attached to tonight's companion item.) On the latter date, Council directed staff to send the matter to a public vote.

Council discussed potential ballot questions on July 19 and directed staff to create two draft ordinances for Council to consider tonight - one focused on retaining the TABOR surplus for use toward long-term water needs, and the other for police, fire, EMS, transportation and Parks and Recreation purposes. A draft of the latter ordinance is attached to this report.

Staff recommends that Council discuss the attached ordinance, the ordinance attached to the companion item - and any other pertinent alternatives - and adopt tonight on first reading a ballot question ordinance. This timing is recommended in order to ensure the ordinance is adopted on second and final reading with ample time to place Council's TABOR question of choice on the November 8 General Election ballot.

### Discussion

Due to favorable economic conditions and increased Town revenue, the Town exceeded its TABOR revenue cap for 2015 by \$714,580. Various factors contributed to the surplus, including strong sales tax growth and contributions for the construction of the North Meadows Extension and Philip S. Miller

Park. In fairness to the budget process, it's important to disclose that all eligible revenue received during 2015 ultimately contributed to the TABOR surplus.

After discussing the surplus, Council on June 21 voted to send the matter to a public vote. State law requires the Town to resolve the surplus by the end of 2016, meaning the only possible time to conduct an election regarding the 2015 TABOR surplus is as part of the General Election in November.

All questions appearing on the November 8 ballot must be certified no later than September 9 to Douglas County, which will conduct the election on the Town's behalf. Ballot language must be set by ordinance - a process that usually requires two readings. In order to meet the timeframes needed to place a TABOR question on the November ballot, Council would need to adopt the ordinance setting the ballot question on second and final reading no later than its September 6 meeting. Because that meeting falls the day after Labor Day, staff recommends that Council hold the two votes on the ordinance to set the TABOR ballot language tonight, and at the August 16 Town Council meeting.

### **Ballot Question Options**

Council on July 19 discussed options with regard to ballot questions and directed staff to create two draft ordinances for Council to consider tonight - one focused on retaining the TABOR surplus toward long-term water needs, and the other for police, fire, EMS, transportation and Parks and Recreation purposes. A draft of the latter ordinance is attached to this report.

Council is not limited to the two alternatives in the draft ordinances - the options for projects and services on which Council could choose to focus the TABOR ballot question are as endless as the Town's lists of projects and services, and even beyond. It's important to note that some options could present interesting political issues, as staff ultimately would recommend finding the resources to fund meritorious projects, even if a ballot question on use of the TABOR surplus toward such a project failed.

Because of this dynamic, staff would encourage public communications detailing that a "no" vote on a project would not be interpreted as a prohibition on proceeding with it at some point in the future, but rather as a desire to receive the TABOR refund rather than immediately spending those funds on the project.

### **Public Communication**

With all TABOR elections, State law requires that a notice of the election be mailed at least 30 days before the election. It must include the election date, hours, ballot title, text and local election address and telephone number. The Town will prepare this information and supply it to the County to create the TABOR notice, as the election will be a coordinated election conducted by the County on the Town's behalf. Staff does not yet have a cost estimate associated with the County's production of this required TABOR notice, which will be mailed to voters in early October.

Staff would like Council's direction on whether additional public communications are desired, beyond the required TABOR notice. Colorado's Fair Campaign Practices Act prohibits using public resources

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to advocate for or against a ballot measure once the ballot language has been finalized, which is anticipated to occur at the August 16 Town Council meeting. This makes it rather impractical for the Town to disseminate any information persuading voters to allow the Town to retain the TABOR surplus, if that would be Council's desire.

The Town may disseminate educational materials to voters following ballot certification, providing both pro and con information regarding the proposed ballot question. Staff distributed a pros and cons "blue book" in conjunction with the November 2015 election, which had six ballot questions, for a cost of \$8,925. The cost to distribute a similar piece for the TABOR election might be expected to be slightly less, as there would only be one question worth of information. If Council desires a blue book to be produced in addition to the required TABOR notice, staff would propose mailing the blue book in late October or early November, to provide additional information to voters closer to Election Day. Direction as to whether this effort should be pursued would be appreciated.

### **Financial Information**

There are costs associated with holding a TABOR election - for mailing ballots to the two districts that would not have otherwise received one, as well as for the required TABOR notice, and for any additional public education materials as desired by Council.

### **Staff Recommendation**

Staff recommends that Council discuss the alternatives and adopt tonight on first reading a ballot question ordinance. This timing is recommended in order to ensure the ordinance is adopted on second and final reading with ample time to place Council's TABOR question of choice on the November 8 General Election ballot. Further, staff requests Council direction regarding whether public communication should be conducted, beyond the required TABOR notice.

### **Proposed Motion**

"I move to approve on first reading, an Ordinance submitting to the electorate at the Regular Election on November 8, 2016 the question of authorizing the retention and expenditure of 2015 excess TABOR revenues for police, fire, emergency medical services, transportation, parks, recreation, trails and open space purposes."

### **Attachments**

**Attachment A:** Ordinance