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Agenda Date: 07/25/2017

Subject:

TABOR discussion to refer ballot question for November 7, 2017 election

Presented By: Tiffany Hooten, Finance Director

POLICY QUESTION:

Does city council support referring a ballot question to registered electors authorizing the city to retain TABOR excess revenue for capital projects?

BACKGROUND:

For the fiscal year ended December 31, 2016, Littleton's revenue exceeded the Colorado Taxpayer's Bill of Rights (TABOR) limit. This excess must be refunded in the next fiscal year unless voters approve a revenue change as an offset.

The TABOR excess is \$1,937,904. The city council must decide by the end of the year to either: 1) refund the excess revenue in some manner or, 2) ask voters to keep the money to spend on local projects or services.

Staff is seeking direction from council to determine the next steps regarding the TABOR excess.

Article X of the Colorado Constitution, more commonly known as TABOR, imposes revenue restrictions on state and local governments. A provision within TABOR allows voters to remove these restrictions, either temporarily or permanently. The permanent removal of TABOR revenue restrictions is commonly known as "de-brucing." There are very few municipalities in Colorado that are not permanently "de-bruced." Littleton is one.

The TABOR excess has many contributing factors. Revenue increases over 2015 in the general fund, as well as significant increases in impact fees and building use taxes all contributed to the TABOR excess. It is important

to note that all eligible revenue received during 2016 ultimately contributed to the TABOR surplus.

In 2006, the city had a TABOR excess of \$1,119,484. The city elected to issue refunds to registered voters and property owners within the city in the amounts of \$20 and \$41.49, respectively. In all other TABOR excess years, 1994-1995, 1998, 1999-2001, 2002-2003, 2004 and 2007, council asked voters to approve TABOR excess revenue be used for capital improvements. A majority of Littleton voters supported each of these requests. A full de-brucing failed to pass in 2006.

Projects that were funded by voter approval include significant safety improvements to Santa Fe DRIVE in cooperation with CDOT, the pedestrian underpass at Highline Canal and County Line Road, purchase of open space, mini-parks and other recreation projects, Ketring Lake improvements, street improvements, upgrades to Fire Station #11, installation of a fire suppression system at Bemis Library, school zone signage conversion to fiber optics, improvements to the fire training burn building, and partial funding of fleet building improvements and museum expansion.

While there has been a considerable amount of interpretation of the TABOR amendment, no particular refund method or methods are prescribed in TABOR or in subsequent legislation. This allows the refund method to be determined in almost any way possible. There is no case law requiring that refunds need to be made in an equitable manner, or returned to any particular source. The city is only required to refund the excess in some form or manner if the voters do not agree that it should be retained.

Alternatives

Ask Voters to Retain

The city need for capital and infrastructure improvements has been extensively discussed with council. According to the most recent business and citizen survey, respondents continued to voice concerns about street maintenance. It was indicated as one of the most pressing issues facing Littleton in the next two years. Over the next five years, the city has over \$65 million in infrastructure and capital needs which need to be funded. A TABOR excess provides the ability for the city to address a small number of these capital and infrastructure needs by asking the voters to allow the city to retain this excess for specific projects.

Should council refer a ballot question for voter consideration, staff recommends the following projects to be funded by the TABOR excess:

- Enhance citizen accessibility to city facilities - address Americans with Disability Act improvements to the Littleton Center, Bemis Library, and the Littleton Museum - \$45,000
- Intersection safety upgrades at Bowles Avenue and Federal Boulevard - improve traffic movement, alignment and pedestrian safety - \$545,000
- Intersection safety upgrades at Littleton Boulevard and Broadway - Improve traffic movement, alignment and pedestrian safety near Littleton High School - \$175,000
- Pavement improvement initiative for residential streets - increase the 2018 residential paving program from 3.4 miles to 7 miles of street resurfacing - \$1,172,904

Ballot Language and TABOR Base

There are two options for ballot language for council review. The first allows the city to retain the 2016 excess

TABOR revenue for specific projects and adjust the base each year thereafter. The second option allows the city to retain the 2016 excess TABOR revenue for specific projects with no adjustment to the base.

It's important to understand the impact to the city of an adjustment to the base versus no adjustment to the base.

The following table reflects the potential impact of an adjustment to the base calculated using the 2017 budgeted revenues and a growth factor of 3%. This is subject to change based on actual revenue.

	2016 Actual	2017 No Base Adjustment	2017 Base Adjustment
Base*	\$67	\$69	\$71.1
Revenues*	\$69	\$68.7	\$68.7
Excess/(Cushion)*	\$2	\$(0.3)	\$(2.4)

Estimated Growth Factor

3.00%

3.00%

**In millions*

While the estimate with no base adjustment indicates a “cushion” of approximately \$300,000, the city is likely to have a TABOR excess in 2017 and possibly in future years. If the base is adjusted, a TABOR excess is less likely to occur in 2017 and future years.

A third option is to add additional years beyond 2016 to allow the city to use future TABOR excess, should that occur, for capital projects.

If the ballot question fails, the city will have to address the TABOR excess by providing a refund by December 31, 2017. This is an important consideration that limits the time available to complete a refund process. The estimated cost to include a TABOR question on the November 7, 2017 ballot is \$4,900 as a city council election is already required.

Temporary Reduction of Property Tax

Based upon the city's preliminary property tax assessment value, a temporary reduction of approximately 2.03 mills would be necessary to refund \$1.9 million. This is an estimate as final assessed values will not be available until November. Commercial properties are assessed at a much higher rate (29%) than residential (7.2%); thus, commercial properties pay more in property taxes and would receive a higher refund.

A temporary reduction of 2.03 mills equates to a refund of about \$16.50 per \$100,000 of actual value. The owner of a \$370,000 home, for example, would receive a reduction in property taxes of approximately \$61. A temporary reduction for a commercial property equates to a refund of about \$667 per \$1,000,000 of actual value. One disadvantage to a property tax refund is that residential and commercial renters would be excluded since they are not the property owner.

There would be little to no costs associated with this method of refund. From an administrative standpoint, a temporary reduction in the property tax mill levy is the most feasible and cost effective method of refund.

Refund to Registered Voters and Property Owners

In 2007, the city elected to issue refunds to registered voters and property owners within the city in the amounts of \$20 and \$41.49, respectively for the 2006 TABOR excess. This amounted to issuing approximately 39,000 checks and 26,000 pieces of mail. If council chooses this method, it is recommended to outsource the processing and mailing of checks due to the tremendous staff time required to issue the refund in this method.

This refund process includes obtaining information from the three counties, reviewing data to determine the final listing for refunds and follow-up on returned mail and completion of the escheat process.

Using historical information related to the refund in 2007, the estimated cost for this refund method is \$48,200. This includes costs for preparing, mailing and escheating checks. In 2007, there were approximately 12% of refunds not cashed within six months which were subject to the city's escheat process. Four percent of checks were not returned to the city or cashed, which required the city to issue a stop pay on the checks. After all efforts, the city escheated approximately 4,000 checks. This process took well over one year to complete.

From a staff perspective, disadvantages include costs to complete the full refund and escheat process as well as staff time required before, during and after the refund process.

Rebate of Building Permits/Building Use Tax/ Impact Fees

Another possible refund method would be to rebate building use taxes, building permit fees, or impact fees. This refund method would be an administrative process since builders or contractors who paid the fees or taxes could be identified from the city's records. There would be minimal staff time to prepare data. It is recommended that the actual processing and mailing of checks be outsourced.

The primary disadvantage of this refund is that it would go to a relatively select group.

Using a rebate of building use taxes as an example, there were 2,646 building permits issued in 2016. A refund would be issued on a pro rata basis. The refund amounts would vary from less than \$1 to over \$300,000. It is estimated that the costs for this refund process would be \$3,000.

STAFF RECOMMENDATION:

Many refund scenarios are possible; however the methods discussed above are options that appear to be the most practical. There are pros and cons to each alternative regarding equity, costs and impact on staff.

Staff recommends a ballot measure asking voters support funding for specific projects. If a majority of the voters say no to the question, the resolution of the surplus will default to a refund.