

## MANAGEMENT AND FINANCE POLICY COMMITTEE WEBEX

**Members Present:** Council Member David Gruber – Chair, Council Member Marcano – Vice Chair, Council Member Gardner – Member

**Others Present:** Mayor Mike Coffman, Council Member Francois Bergan, Council Member Berzins, Council Member Coombs, N. Freed, R. Venegas, T. Velasquez, G. Hays, N. Wishmeyer, S. Newman, T. Vaughn, R. Peterson, H. Hernandez, A. Jamison, D. Hudson, D. Giordano, D. Lathers, Garrett Walls, and T. Hoyle

---

### INTRODUCTIONS AND MINUTES

August 25, 2020 minutes were approved.

---

### CONSENT ITEMS

August of 2020 was 1.8 percent lower than August of 2019.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

No follow-up needed.

---

### PROPOSED CAMPAIGN FINANCE REFORM ORDINANCE

#### Summary of Issue and Discussion

The Mayor, Mike Coffman express thanks to the Committee for allowing him to present his proposal. He stated he asked Steve Ruger before he resigned what he thought a campaign finance reform ought to look like. He recommended that it be simple and not to try and do everything at once and he was concerned about enforceability. The Mayor stated that he had his proposed ordinance structured around those lines and what the public would most want out of campaign finance reform. The Mayor's proposed campaign finance reform ordinance was drafted by the City Attorney office and brought before the elections commission.

#### Committee Discussion

**Council Member (CM) Marcano:** I have a lot of heart burn with the elections commission dealing with complaints as they are basically appointed by Council. I really would rather see that be a third party rather than have folks that are so close. I think the initial draft of the other ordinance adjudicated that to the City Clerk's office, which while not a direct counsel appointee, I know there were some concerns around them being City employees. So, if this were to move forward, I think this needs to be someone outside of the City or at the very least someone in the City Clerk's office.

**Mayor Coffman:** One thing Steve mentioned is the concern about the weight of the responsibility on the City Clerk; him or herself. And so that's certainly a consideration and I'm open, as long as it doesn't go directly to some type of legal proceeding. Because a lot of the things are fairly clear, unless it depends on how you write it and if you write a mind-numbing complex campaign finance reform who knows where it needs to go. It probably would need to be lawyered up from day one. But if it's simple

and clear and a violation is either you have a contribution that's too much and you have to give it back, or if you have a contribution from a source that's not authorized. Those are the two basic things and also submitting your reports on a timely basis that's basically the crux of it. So it depends on where you go in terms of how you write and in terms of who ought to be the initial oversight authority. I clearly want it to be administrative in nature and then certainly one has the ability to appeal then you have to decide to lawyer up. All administrative decisions are subject to appeal.

CM Marcano: So, with regards to complexity here, could you summarize this one in a one pager? Because I think that it will be something very useful to have both of these broken down in that way. Because I don't think that folks currently read our existing code cover to cover. I think it's just a matter of summarizing the intent in a way that folks can pretty easily while making sure that the language is as airtight as possible. I think that's why the other proposal is long because this was written in conjunction and drafted by a former employee at the Secretary of State (SOS) office, which I think might have been there when you were at SOS. We worked with professionals who are experienced with Colorado's election law. So, I don't think length is necessarily a detriment, in fact I think that it's good when we're trying to make something airtight. That is actually one of the concerns I have with this because it doesn't go into detail of outlining all those processes. But again it could be summarized in a one pager to actually make these things less likely to become legal battles I think need to be clearly defined.

Mayor Coffman: You have to remember as we historically go up in terms of different echelons in government, the campaign finance laws tend to be more complex or more complex at the federal level than they are at the state level and should be easier at the local level. These are not historically high cost campaigns but certainly become that and also unfortunately they become driven by outside groups. So I think it's important again in being realistic in terms of the contribution levels.

CM Gruber: My point on that, I'm a little bit concerned about taking a multiple page document and turning it into a one page because if the law is violated it probably won't be something on the one page. The violation could be somewhere in the other pages that aren't captured in the synopsis. Even though there's a one-page synopsis, the candidate is responsible for the entire law not just that one-page synopsis and so that's my thought on that.

Mayor Coffman: A lot of the language in the proposed ordinance is existing law. Most of the language is existing law. You can obviously see what is struck and the bold is obviously the new language and so it does largely comport with the existing law.

CM Gardner: One of my questions has to do with allowable contributions that it doesn't allow contributions from anything but an individual. I guess I'm just curious regarding the thought process there and to be clear, what my concern is what that's going to allow is an individual, a wealthy individual, to self-fund their campaign because of course we can't place any restrictions on self-funding.

Mayor Coffman: I think those are pretty decent limits, but I think that's always a danger in campaign finance reform. The more you ratchet down an individual's ability to raise funds contributions the more you empower outside organizations and the more you empower wealthy candidates. Under the Valeo decision in the 1970's, I think the interpretation of that supreme court decision is that you cannot restrict an individual's ability that gives to a wrong campaign. Unless you go to a total public funding of a

campaign. I think that's been tried in different areas on more of a voluntary basis, however that's a very hard and very difficult issue too because not to venture off the subject, but because the fact incumbents inherently have earned media and you can't always place a dollar value on that, and there's an inherent advantage for an incumbent over a challenger. Nevertheless, I think your point is well taken. There are things like some of the traditional donors in municipal elections that are called limited liability corporations' and partnerships. I can't remember where they are in state law right now and in the federal law, but they have been historically significant contributors to local elections, and they would be barred. However, certainly those individuals could write a personal check, but they couldn't write a corporate check or a check from their business.

CM Gardner: I think in general my opinion on this topic is it needs to provide as much transparency and disclosure as possible. I would be interested in maybe doing our initial disclosure earlier, currently I think it's 90 days and maybe pushing up to 180 days. I think, in general, I prefer a simpler approach and for the good of everyone the biggest reason why that is and why I don't think comparing us to state candidates for example is apples to apples. They have county and state party election lawyers that can help manage and navigate election law and nonpartisan candidates on council. We don't have that and so that's why my preference would be to do as simple campaign finance ordinance as possible. This is just a general comment.

CM Marcano: With regards to the limits I do have an issue there. I think that they're too high and I really dislike treating larger or in terms of constituent races differently than ward races because the emphasis should be on the candidate to be able to grow their base and contact more people and find more sources of funding rather than basically empower those races to be influenced by extremely wealthy donors. I think there's a large difference between having a cap of \$1,000 versus a cap of \$500, and even \$500 is too high, when you look at 40% of Americans that don't have more than \$400 for an emergency situation. So, who are we really empowering here? I think that operating off of the state limits if folks don't want to go any lower, then that is something that's been proven to yield better results and it combats the influence of extremely wealthy contributors. The dark money concerns are well taken and that's going to happen anyway. We've seen that growing in Aurora over the last couple of cycles especially as the state delegates more local control to us over things like surface use for oil and gas and minimum wage. So who knows what else they might delegate to us in the future. I think that we're seeing is kind of a natural progression of that local control attitude, so our races are going to draw more money. So, I am concerned about having higher limits because I don't want our races to look like federal races where you have folks who maxed out and then makes smaller contributions much less influential. And there was something that you brought up Mayor that I would actually like to explore further and that's the public financing component as a potential limit to stop even a wealthy individual from basically self-funding their whole campaign. I didn't like seeing that happen for our gubernatorial race and I don't imagine any of us really would like to see that happen for a city Council race. But the democracy vouchers model out of Seattle has been very successful in allowing grass roots candidates to actually perform very well, and even combat Amazon which is no small feat and still come out on top. So, I think that's something worth exploring as well, especially if we continue to grow.

Mayor Coffman: CM Marcano the proposal that you are supporting which my understanding is does not engage in public funded campaigns. I don't know what the level support would be among people of Aurora to have taxpayers' dollars going to political candidates. This has always been a controversial issue and it's been going on for a long time.

CM Marcano: Yes, it's definitely been a controversial issue, but I think the results do speak for themselves you get a more diverse base of candidates in terms of ideology and also personal levels connection with money interests, so I think that's positive. And really basically I think it boils down to what's the acceptable cost of a functioning representative democracy. But I do have something if you want to talk about after this that's not directly related, I'm happy to spend some time chatting about.

Mayor Coffman: Sure. But the problem is you're making an assumption by pushing down the limits. You want public funded campaigns, but we don't have that. Your pushing down the limits and so what you're doing or accomplishing in that regard since the limits are reasonable is that you're empowering outside groups and independent contributors that you call dark money and you're empowering wealthy candidates in the reality of the situation that we have today.

CM Marcano: In terms of likely funding sources that may happen. I would like to see a candidate defund them being beneficiaries of outside money and basically not being able to meaningfully garner any grass roots support especially from folks that actually reside in Aurora. That kind of ties into a campaign scenario, right. However, if we want to go down the road to discuss strategy, we can but the fact of the matter is our last election cycle I think was the most expensive in the city's history and continuing to leave higher limits in place is just going to perpetuate that trend. So that's why I think the limits need to be lower.

Mayor Coffman: What do you think they should be?

CM Marcano: I would honestly have it be the same as in the other proposal, 80% of what the state legislature currently can raise because that's the average size of our wards. Senate districts are larger, but they have the same limits, so \$320 I think is where I would like to see it. I know that can be an issue to negotiate, but \$500 and \$1,000 again I don't think that makes sense since that's higher than the state.

Mayor Coffman: And what for a Mayor and Council at Large?

CM Marcano: The same limit. You want to represent a larger constituency it should be your job to garner more support and to fund raise a broader base.

CM Bergan: I don't agree with a \$500 limit for a ward Council Member. I actually do agree it should be the same. I don't agree with the amount. I think it should be \$2,000 personally, right now, it's unlimited so I don't even agree with the amounts. I have a question on constitutional rights. I don't know if there's an attorney on the line, but is it illegal to tell an individual what they can contribute to their candidate?

Mayor Coffman: Let me defer it to legal but let me take a stab at it first. It's my understanding that you cannot restrict an individual to give but you can restrict a candidate from receiving. I don't know if there's somebody from the City Attorney that would like to weigh in on that.

H. Hernandez: My knowledge on that one is basic, but I believe that the Mayor is correct however we can take it to Dave Lathers and have him get back to you if need be.

CM Bergan: You mentioned Mayor that they could still bundle contributions as long as they list the individuals and the addresses. This happens all the time for example with school unions and other unions where it's not coming directly from the union it's basically are called an action out on websites and social media for the members to the union to then make those contributions so that would still be allowed. To me that's almost a corporation, it's just getting around the law by saying we can't give it, but you each give \$50 bucks which is what happens.

Mayor Coffman: I think what the difference would be in the current law if you look at the small donor committees. They don't have to list the dollars that it's from small donor XYZ. Under this you could say whatever entity can collect checks and forward the checks on but you as a candidate have to report each individual. It can't be that, I received this amount from whatever entity labor union or whatever small donor committee XYZ, or political action committee XYZ. You can only receive it from individuals, and we have to note the personal information for each individual as we do now, but now we can take it from anyone which under this if this becomes the law it can only come from individuals.

CM Bergan: So, an LLC can be partnership but it's not a corporation and you're saying the LLC could not contribute but the two partners could for example.

Mayor Coffman: The partners individually could contribute to the limits but the LLC you couldn't accept a contribution because it's not from an individual.

CM Bergan: And apparently that's constitutional.

Mayor Coffman: No, I think your referring to Citizens United but that's the ability for an individual to contribute. But again, you're going into this situation that an individual can spend so, as a candidate I can spend my own money without limitation. A corporation could spin money in terms of through an independent expenditure, but they can't receive it under this proposal and that is consistent with Citizens United. I think it simply states that corporations as entities can but just making politics but then changed the ability to regulate contributions.

CM Berzins: I just want to comment that I don't agree with the limits either and let me state this, I'm not running anymore. I've run five campaigns and each one has gotten a little bit more expensive because postage has gone up, paper has gone up, and printing has gone up. Its reality. Campaigns cost more every time. I'll be honest if you think that because you're going to set a low limit that campaigns are going to get cheaper, they're not. Because people are not going to cut back what they do to campaign. Are you going to cut back your yard signs? They've gone up, the wires for yard signs have gone up. Its reality! People will find a way to get money in their campaign. If you only want it from individuals, then you're really not solving the problem. You're just creating more problems because this is reality. The first time I ran I talked to an advisor and the first thing he asked me was how much money do you think you can raise because campaigns are expensive. And if you don't have the people and you don't have the backing then don't waste your time. It's just the reality and this is not a perfect world. I wish it was but it's not. It takes money to run a campaign. If you think that the limits are lower the campaign is going to be cheaper its not that's the world. Let me ask Mayor Coffman where does these online companies like Emily's list, Planned Parenthood, WinRed and ActBlue, where does that fit in your new proposal?

Mayor Coffman: In order to receive a contribution from a group like that you would have to have a breakdown of every individual that contributed to that and it may need some clarifying language. It's an interesting question, I think it needs clarifying language and I'll have to think about that. Could they give as an individual reported every contributor and certainly that's my intent but what happens if you receive a check from ActBlue. Can you cash that check and list every individual with all the required reporting information but the way it's written right now you could not and so that's something I'll have to think about. Because you can only receive checks from individuals, and you can't receive checks from a non-individual.

CM Berzins: If you go back and look at some of our campaign finance reports you'll see \$25 and \$50 checks from all over the country. So that tells me that they're coming in somehow and some way and so I'm concern with that if we limit to individuals. What are we going to do with these online giving groups and the limit can only come from individuals?

Mayor Coffman: That's a good question but the way it's written now unless the checks came from individuals the candidate couldn't cash them and use those resources. So that's something I would have to think about, but it would require clarifying language in order to do that. I think the fundamental issue is transparency.

CM Coombs: So, I again want to raise the concern of the election commission having this on their plate. I know that certainly the City Clerk's office having it on their plates it would require additional staff. It's just not clear to me the current frequency the election commission meetings and the composition of the election commission it's something that could be quickly adjudicated, and they be able to adjudicate everything that came forward. I don't think having them do it makes it impossible to have frivolous complaints. I think it just means if we have a frivolous complaint come forward it just puts more on their plate and it could potentially make it harder for them to assess the difference between the frivolous ones and the genuine ones.

Mayor Coffman: So, I am waiting from the response of the election commission which I did present to them last week.

CM Coombs: Okay, I have one other question, and have you evaluated if this had been in place when you were running for mayor how much you would have raised?

Mayor Coffman: Considerably less, I haven't calculated at a mayoral.

CM Gruber: You had talked earlier about the fact that the City cannot restrict from giving but the City can restrict a candidate from receiving. We had an issue that's been raised a couple times now about money coming in outside the city. People who don't have an interest in the city. I can see where a business owner or a resident or someone that owns property in the city should have the say on how the city is governed. I struggle a little bit on how somebody from San Diego or why that person would be able to influence an election. Is there a way within the ordinance to restrict that and tell candidates that they could only receive money from people within the city or people with business located within the city?

Mayor Coffman: I think you could probably write that, but I think it gets fairly complicated as to what an interest in the city constituted. But I suppose that would be a good question for the City Attorney's

office. I think that you're starting to get fairly complicated, but it probably would be easier if you say residents in the city or I guess you could say property owners. There might be a question in terms of constitutionality of allowing property owners and residents, but not other individuals that may feel an interest in the city but don't reside in the city. Again, the central theme is simplicity and something that's easy to enforce.

GM Gruber: My second question has to do with contributions in kind. You described those within the ordinance. My concern in the last election we had organizations in Denver send canvassers to the city and if those were paid by a candidate obviously resulted in an expense. What are your thoughts on outside groups canvassing within the city?

Mayor Coffman: I think you have constitutional case law regarding that in terms of freedom of speech and I do think that we do have that within our law now. It's a requirement to report contributions in kind and so I believe that exist. But again, we're not proposing to move to publicly funded election and there's all kind of challenges there. So, you can't limit a wealthy person and I don't think in any circumstances you can limit an outside group and so you're transferring the influence or ability for a candidate to have his or her own message. It can control his or her campaign to outside forces and so I think we realize there's no perfect world as CM Berzins said but I think it's important to strike an appropriate balance.

CM Gruber: I would like to remind everyone the other proposed campaign finance reform ordinance that came forward to committee went with a split vote. I would like to vote on moving this one forward and with this report both of them will have to be adjudicated and one or the other will win.

CM Marcano: I'm a no on this because there's a lot of unsettled issues as we discussed. So, I would like to see this come back.

CM Gardner: I'm fine with it. I moved the other one forward. I think having the full Council to discuss them both is appropriate.

CM Gruber: I also recommend moving this forward and like the other proposal there were many questions that will need to be resolved at Study Session as opposed to the Management and Finance Policy Committee.

#### Outcome

Council Member Gruber and Council Member Gardner voted yes and Council Member Marcano voted no. Based on the vote the Committee recommended that this item be forwarded to Study Session.

#### Follow-up Action

Staff will forward this item to Study Session.

---

### **PROPOSED BACKGROUND CHECK ORDINANCE**

Council Member Bergan has proposed a background check ordinance for all Council Members and stated the intent of this proposed ordinance is to ensure transparency to the voters in Aurora. Our voters should have confidence in knowing the candidate's background, specifically whether or not they have had criminal charges. The candidate must provide the criminal background history, therefore there is no cost to taxpayers.

Committee Discussion

CM Gardner: So, when would this process happen? Will it happen after the election?

CM Bergan: Yes, and actually that is a really good question CM Gardner because we have things drafted by our attorneys as you know, and I had originally asked for this to be prior to them even being placed on the ballot. Therefore, I might change this, but this is how it is right now. Currently this is just confirmation of their eligibility to be seated. So, the election could happen and let's say they have a criminal record that was not discoverable or wasn't found out before. This would come up prior to them being seated for the first council meeting in December. I would imagine that if they had a criminal record which is against the rules to be a Council Member that you can't have a felony, then it would go to the City Manager.

CM Gardner: So, that's what my idea was basically. Maybe when you send your signatures as part of the process to get on the ballot you also submit the background check. Because I guess I'm trying to foresee that you have the election and initially this comes up. It's going to throw things into a lot of chaos whereas we can be more proactive before that person even gets on the ballot. That's just a thought.

CM Bergan: Thank you. I'm actually open to that. I think we had several versions going back and forth and the attorneys saying what I could do and couldn't do. Honestly, I actually agree with you. I probably will go back to the drawing board with this to consider doing it prior to them being actually put on the ballot. If it's done after as it's written right now, then like you brought up there's all the consequences of what do we do with a person that has a felony that's won an election? So very well taken.

CM Gardner: Okay. Well then, I guess that really answers my other two questions. Because one of them was okay so we find out someone has a felony after the election then what happens? And then my other question was if it's not provided in a timely manner what do our rules say about that? But if we're doing it as part of the process before you even get on the ballot then that's neither here nor there. So that's all my questions.

CM Marcano: So, I guess I'm curious to what spurred this.

CM Bergan: Sure. For me it was transparency for the voters, and which is why CM Gardner's point is one that I need to really consider. It was too make sure that the voters knew who they were voting for and to make sure that we do not have someone seated who has a criminal background. I mean it's that simple.

CM Marcano: Interesting. Okay, what has spurred this specifically now?

CM Bergan: I thought about it in the last couple years. Elections have developed and obviously our city is growing. There's lots of people that are running for office. I think what spurred it for me in the last election for the mayoral race there was a woman who submitted her signatures then didn't have enough signatures and there were a lot of questions and that kind of spurred me to consider what could be done to make sure we have candidates that are eligible.



CM Marcano: Okay. So nationwide what we're really seeing I think is something that flies in the face of and I'm not sure if you're familiar with the "Ban the Box." Kind of methods for like employment for example, which actually has shown benefit's through folks who are seeking employment by eliminating employment discrimination. My concern is that this is going to lead to inherently discriminatory situation especially as we see more candidates of color. And I also have a problem with basically requiring folks to pay for a background check. Even though I don't think those are too terribly expensive but basically adds another small hurdle for folks to file, so I don't really like setting that precedent. Do you follow?

CM Bergan: Sure. So, the reason for having the candidate to pay for it is so that the taxpayers will not be burdened for that criminal background check. I think also since we just had campaign finance come up and where you're really trying to reduce the limits. So maybe if we didn't reduce the limits, they would have somebody contribute to the campaign to pay for the background check. And then regarding your "Ban the Box" I don't know anything about that, but this is not to discriminate against anyone unless you think that someone with a felony should be an elected official representing the taxpayers then on that point you and I disagree.

CM Marcano: Sure, and I guess let's just put it on the record. I do think that banning people because of mistakes they made prior in their life is inherently discriminatory and that's something that shouldn't be in our Charter either. I think that's something we should definitely have a discussion about, and I look forward to that.

CM Bergan: So currently are you allowed to be on City Council with a felony?

CM Marcano: I guess we can ask Legal.

D. Lathers: The Charter says you can't have a felony but there is really no mechanism in place to monitor that.

CM Bergan: So, you can't have a felony. Therefore, I'm basically verifying that they don't have a felony.

CM Berzins: Remember I told you I have run for office five times. I've had to have background check and fingerprinted so this is not unusual, and we use to do this all the time. I'm trying to remember at what point and I do think it had something to do with when the signatures were turned in. They fingerprint over at the jail right next to the City building and that's where I went. I also want to let you know many cities are doing this now. I learned at National League of Cities that to pay for it they have a small filing fee, an administrative fee, which is not unusual for anything we do today. Of course, you can pay for it or your campaign can pay for it, but it did have that small filing fee that they can use so the citizens don't have to pay for it. But that has been on the radar for National League of Cities and many cities already have it in place. They want to be transparent and know who wants to be making decisions for the city and they felt like this is a good way to do it. I don't know how background checks are changed. I don't know but honestly it was no big deal and it was transparent for our citizens to know who they were going to vote for.

CM Coombs: So, it sounds like there's a significant change happening here that we want to do it before someone is running versus before they're seated and that's fine. It seems like this is something

where the intent is to confirm that someone doesn't have a felony. But the result is, that we're asking them to submit a full background check which may include misdemeanor traffic offenses and things like that. So is there a way to clarify that the only thing someone would do is to provide documentation confirming that they don't have a felony. Because personally if you looked at my criminal background check it would be awfully boring. But some people it may not be the case for them and there may be mistakes that people made in their lives that are not disqualifying. I do agree with CM Marcano that even if those mistakes resulted in a felony charge that they shouldn't be disqualified. But that's in the Charter so that's a separate discussion for a separate day. But in the meantime, I don't think that you should require that every misdemeanor traffic offense or other minor mistakes someone has made between the age of 18 and running for office be put out there for the world to see. Because again, I think then we're trying people for things they've already gone through the process of doing the time for, if you will.

CM Bergan: Sure, and I appreciate that CM Coombs. I guess I wasn't looking necessarily for minor misdemeanors. I was looking for egregious crimes so the public would have knowledge of that before. So, I'm going to end up having to pull this to redo it. I appreciate all the comments and will take those into consideration.

CM Gruber: CM Bergan let me understand that you are pulling this, and you don't want a vote from the Committee.

CM Bergan: Correct. I'm going to have it changed and I'll have to bring it back.

#### Outcome

CM Bergan pulled her agenda item for changes and it be brought back to the Committee at a later date.

#### Follow-up Action

CM Bergan will bring the agenda item back to the Management and Finance Policy Committee.

---

### **IT CARES SPENDING**

Scott Newman, Interim Chief of Information Technology presented an overview of the technology solutions and items that were purchased with the CARES funding.

CM Gruber: Our vulnerability to threat that you talked about earlier, I'm concern about ransomware since some of the other Colorado cities have been hit with that. Through this or through other means, have we taken action to better protect ourselves against ransomware?

S. Newman: Yes sir, the End Point detection and Response is specifically for the ransomware threat factor as well as the Configuration and Patch Management. Both of those hand in hand specifically are targeted more towards the ransomware threat and being able to help mitigate that. Again, it wouldn't necessarily stop it immediately from one or two computers, but it should help contain the damage so that its only a limited set of computers instead of all of them.

#### Committee Discussion

CM Marcano: No questions, but I want to thank you all for being proactive with CARES money and helping us catch up on more tech issues.

CM Gruber: Scott, appreciate the work you have done. You may have known I've taught cyber security at Colorado State University. What you are doing is the state of the art and best practice, so I appreciate what you're doing for the City. Thank you.

T. Velasquez: CM Gruber, I wanted to add one more thing to Scott's presentation. He did include for the Committee the one-time and on-going cost breakdown on this. So, CARES money will cover it for 2020. I wanted to point out for 2021 the on-going component will be a budgetary item that we'll have to prioritize and look at ways that we can continue these softwares and services. So, I just wanted to bring that up.

CM Gruber: That explains why there wasn't an ask at our Saturday workshop. Normally, Information Technology has some pretty important asks. So, thank you Terri.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

No follow up is necessary as this item was informational only.

---

### **EXTERNAL AUDITOR CONTRACT**

Nancy Wishmeyer, Controller presented and stated the City will need a new contract in place for the 2021 yearend audit (which will begin late fall 2021). BKD has provided the attached proposal for audit services for the next five years. In order to provide a new perspective to the audit, but still have staff continuity, BKD proposes a change in the concurring partner, the audit partner, and the audit manager. The proposal includes competitive and consistent pricing: the 2021 price remains the same as the 2020 price and 2% price increases for years 2022 – 2025.

There are a limited number of top tier firms performing governmental audits in the Denver metro area. BKD is one of the most prominent firms in the area, and in the nation, specializing in audits of governmental entities. Expertise in this specialized field is essential for a thorough and well executed governmental audit.

Does the Committee recommend BKD, LLP for external audit services for the next 3 years, 2021 - 2023, with an option to extend for 2 more years through 2025?

#### Committee Discussion

CM Gruber: Nancy, my question is this protestable? Could this make us vulnerable to a violation of our own acquisition rules.

N. Wishmeyer: I don't believe so because we were able to move forward by doing some additional work by looking at firms to see if there is competitive pricing for the requested information. And if we were to do a competitive process it is unlikely we would get anything better out of that.

CM Gruber: So, what you're simply saying it's about a process that's different from an open competition and so it's in the City's best interest to bypass the process of a full and open competition.

N. Wishmeyer: Yes, that's correct.

CM Gardner: I don't have a question, but I do have a comment. I know BKD very well and the fact they are changing the audit partner makes me feel a little bit more comfortable. But I do have a little heartburn with the fact that we have used this firm since 2006 and we're not at least pricing it out for another three years so that point we'll be going on nearly 20 years. So, I just want to say that assuming we are following our usual or at least following our policy when it comes to contracts, I'm okay moving it forward.

CM Marcano: I want to thank staff for taking comments which were expressed at our first meeting of the year about utilizing the same firm and the same team specifically, so I am happy to see the change. I did think the pricing makes sense so if everyone is good, I'm good to move it forward.

CM Gruber: I'm also good with moving it forward. However, I do want the minutes to reflect that it's in the City's best interest to bypass are normal process on this.

T. Velasquez: I will add the Finance area does have some exceptions in our purchasing rules and certain contracts like this such as banking services are also treated very similar. We do look at other pricing and those types of comparisons and when we feel it's the best interest of the City, we do make these types of recommendations. So, this is in line with that same process.

#### Outcome

The Committee recommended this item be moved forward for full Council approval.

#### Follow-up Action

Staff will forward to the Regular Session.

---

## **COLORADO SALES AND USE TAX SIMPLIFICATION SYSTEM**

### Summary of Issue and Discussion

Previously the Committee was presented with information regarding simplification actions taking place prior to adoption of economic nexus. The State has activated the Sales and Use Tax Simplification System and has presented the city with an Intergovernmental Agreement for participation in that system. The Colorado Municipal League also worked with home rule cities in drafting model language for economic nexus.

With Colorado Senate Bill 19-006 the legislature directed the Department of Revenue to develop a Sales and Use Tax Simplification System. The system developer was selected through a request for proposal by the State. The Sales and Use Tax simplification system (SUTS) will allow a business to file sales tax returns on a single site for all taxing jurisdictions in the state. The simplification measure will also allow the city to adopt a provision requiring vendors with economic nexus and not only physical nexus to collect sales tax. The adoption of economic nexus is much more likely to pass a court test under the ruling in Wayfair vs. South Dakota if simplification measures are in place. In July, the city adopted a marketplace facilitator ordinance but held off on adopting economic nexus until the SUTS system was operational. The State's vendor for the system, Munirevs has indicated they are ready to begin work on an integration with the city's tax software. This integration price was negotiated by the State and is \$17,500. It is believed that this cost will be more than offset by

revenues from adopting economic nexus. The integration work can also start prior to signing the IGA. An additional simplification measure as part of the SUTS system is a single address location system that is being developed by another state vendor and also includes a taxability matrix. This is an improvement over the current address location system vendors certified by the state. The city currently has ordinance language regarding a hold harmless provision for vendors that currently rely on those systems for sourcing sales tax collection. While the figure is very difficult to estimate, the adoption of economic nexus may result in up to one to two million dollars of additional revenue per year. Most of the internet retail space already remits sales tax to the city. Moving forward staff would recommend agreeing to the \$17,500 for the integration and starting work immediately on that project. Next a resolution would be brought forward for approval of the SUTS IGA and an ordinance for adoption of economic nexus with a hold harmless clause for the address locator and taxability matrix. Currently 29 home rule cities have approved the IGA.

1. Does the Committee approve of sending the IGA for participation in the SUTS system for full council consideration?
2. Does the Committee approve of drafting an ordinance incorporating the model economic nexus language and bringing this forward for full council consideration?
3. Does the Committee approve of the \$17,500 expense offset by additional revenue for integration with the SUTS system?

#### Committee Discussion

CM Gruber: Garrett, the Committee received the letter that the Business Advisory Board drafted, did you have any other thoughts on this?

Garrett Walls, Business Advisory Board: No, Trevor did a good job with summing up. Just the concern was voiced by several members talking about qualifying for nexus in state and that it's a double-edged sword. We definitely appreciate the efficiency move to the system and were fully in support of that. We just want there to be some sort of training and support component potentially by the SBDC (Small Business Development Center) or state agencies. To help retailers understand for an example if you're shipping to Grand Junction you need to be collecting Grand Junction sales tax or Mesa County sales tax as it applies, which is probably collected in state sales tax. So that was our concern. We didn't want a whole bunch of retailers that are shipping products across the state to all of sudden be out of compliance with any of these sales tax collection practices. Therefore, we need some education.

CM Gruber: As we move this forward and I suspect it will move forward but that would be having SBDC available to speak at Study Session. I think would be an important move. Trevor, I have a question for you. When we discussed this before we talked about the TABOR impact and that as a home rule city Aurora has the ability to tax certain things a certain way. This combined system is combining things across the state which may or may not include the same tax that Aurora has on Aurora products. How's that dealt with?

T. Vaughn: So how that's dealt with is actually it doesn't change what tax is applied to. All its doing is providing a centralized place to file and pay the taxes, so it does not unify the base across the state. Wayfair said you don't have to have the same tax rate there. I don't know that the question regarding

unification or uniformed base was really addressed in Wayfair. That's potentially an area that a retailer may say that there's a challenge there. However, in a lot of states there are some situations where there are some different tax abilities, but Colorado is particularly complicated with that situation where jurisdictions will just vary from one place to the other. What we did do as a city is we adopted standardized definitions and then that taxability matrix is being compiled as part as that state's system so vendors would be able to look and see and hopefully things are defined the same. They can see if an item is taxed in this city or if it's not taxed and try to adjust as they do that. The software out there has become a lot better and the retailers have become a lot more sophisticated and software vendors have offered products which adjust for that. As far as this goes this is all about enforcement of Aurora's existing tax code. There's not a change with the tax code, it is about enforcement and therefore no TABOR impact.

CM Gruber: Thank you. I appreciate all the work that you folks have done on this. This has moved a long way and bringing in an extra couple million dollars is always going to be a helpful to the City, so I appreciate that.

The Committee recommended that this item be moved forward unanimously.

#### Outcome

The Committee recommended that this item be moved forward to Study Session.

#### Follow-up Action

Staff will forward this to Study Session.

---

### **PROPOSED ORDINANCE TO AMEND THE EXECUTIVE RETIREMENT PLAN**

Terri Velasquez, Finance Director presented. The proposed ordinance allows the City Manager or designee to enter into appropriate agreements, on behalf of the city, with any service provider qualified to offer retirement services. Currently only one vendor, the International City Managers' Association Retirement Corporation ("ICMA-RC"), is authorized to establish and maintain a retirement plan for executive personnel of the city that is qualified under Internal Revenue Code Section 401(A).

#### Committee Discussion

CM Gruber: So then just leave it up in the City Manager's hands.

T. Velasquez: Yes. It allows us to go through a similar process as we do with our 457 where we can look at either an RFP or RFI to do a more competitive review of the plan fees as well as the investment offerings. So, this will be something the City Manager or his designee could determine.

There were no more questions and this item was recommended to be moved forward unanimously.

#### Outcome

The Committee recommended that this item be moved forward to Study Session.

#### Follow-up Action

Staff will forward this item to October 5, 2020 Study Session.

**UPDATE ON CITY CASH, INVESTMENTS, AND FINANCING**

Andrew Jamison, Debt and Financing Administrator stated on a reoccurring basis, staff provides the Management and Finance Policy Committee informational updates on the status of the investment portfolio, an assessment of the City's cash position, and review of recent debt transactions. In light of the ongoing challenges stemming from the COVID-19 crisis, staff is providing these updates on more frequent basis.

Since the onset of the pandemic, staff has increased the portfolio cash & equivalent allocations target to 10-15% from 3-5% to provide additional operating flexibility. Over this period, the portfolio has grown slightly from \$585 million to \$613 million. The current yield on the portfolio is 1.79%; this will steadily decline as market interest rates have decreased dramatically. For example, bonds were purchased in July at a yield of 0.50% and yields on government money market funds are less than 0.10%.

The portfolio has not encountered any downgrades since the last update in April. However, ratings agencies have adopted negative outlooks on several sectors in the portfolio primarily due to increased fiscal challenges from the pandemic. The sectors include the US Government, US Agencies, Corporate Financials (US Bank, Wells Fargo), and several Municipal Issuers (New York, Denver). Staff and the investment advisor are monitoring these holdings and do not recommend selling any investments at this time.

The debt team is in the process of issuing Certificates of Participation to finance construction of the Southeast Recreation Center. On September first, S&P Global Ratings affirmed its 'AA' Appropriations rating on The City's COP debt. S&P's implied Aurora Issuer rating is 'AA+'. As illustrated in the attached report, S&P highlighted Aurora's strong financial management, economy, budgetary flexibility, and liquidity profile.

T. Velasquez stated I did want to add, we did have a real minor situation on the Southeast Recreation Center when we went to do the title search for that particular COP. We found that there are some restrictions by the federal government when they did that land transfer. In order to get around that and keep our transaction moving forward, we talked to the City Manager and he agrees we'll do a pledge of a portion of the Aurora Municipal Center (AMC) building to move that transaction forward. That was not how we had originally contemplated this transaction. However, once we clear up the issue with the federal government which basically the Department of Interior has to do an approval of the use of the land of the Southeast Recreation Center. Once that's cleared up, then the AMC will be freed up again. But I did want to make the Committee aware of this since the financing ordinance that was originally presented to the Committee did not include that as the collateral for that transaction.

**Committee Discussion**

CM Gruber: I noticed that the S&P global report was outstanding. I noticed how well they rated the City and the fact that we haven't dipped into any of our rainy-day funds and that our credit was very strong. Terri, we're you surprised about this? Did you see this coming that we would be as strong after COVID as we are?

T. Velasquez: Well, I do credit this as Andrew said to our financial management and it's the fact that Council has been supportive of the city 's financial proposals and taken measures very quickly. Rating agencies have more concerns when they don't see cities or an organization taking the appropriate action and especially when they see agencies that are only doing temporary measures especially if you have an ongoing issue. What we saw here though was that Greg did a great presentation with the rating agencies and all the fiscal actions that have been taken by Council including actions for the 2021 budget and in doing so the rating agencies felt a lot of confidence in our ability to manage this crisis. So, it was a great job to the team; Andrew, Greg, Carol and Nancy and also to our leadership, ultimately to City Council, for making the tough decisions.

CM Gruber: Thanks, I want to congratulate you on that. Several cities are getting hammered on their ratings because they weren't as aggressive as you folks were in recommending changes. So, congratulations for that.

CM Marcano: I just want to say that I'm frankly amazed how talented our financial staff is. You all have put together a very comprehensive strategy and it's serving us well. So, thank you on your work and dedication.

CM Gardner: Quick question the target for the cash is at 10% to 15% and we're kind of at the low end of that. Are you expecting to move additional maturities into cash or are we going to kind of wait and see what develops over the next couple of months, or what are your thoughts there?

A. Jamison: No plans to actively move anything to cash. In the booklet you can see we always have a large amount of cash rolling off the portfolio. In addition, usually this time of the year you can think about how the Water revenue cycle works that a lot of these water bills are coming in and so we tend to accumulate the cash seasonally anyhow. And so, we're pretty comfortable at that 10% level. It's much higher than we would be ideally if it wasn't in a crisis so we're pretty comfortable at that level.

CM Gardner: Okay. And kudos to our finance and budget staff. I think we all know what a great job you all do so thanks for the update on this.

#### Outcome

The Committee thanked staff.

#### Follow-up Action

No follow up is necessary as this item was informational only.

---

## **MISCELLANEOUS MATTERS FOR CONSIDERATION**

### Summary of Issue and Discussion

- The next meeting is on Tuesday, October 27, 2020 at 1:00 PM (WebEx).



THESE MINUTES WERE APPROVED AS SUBMITTED



\_\_\_\_\_  
David Gruber, Chair of the Management & Finance (M&F) Committee

11/2/20  
Date

