

RESOLUTION 2016-068
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING A BALLOT QUESTION TO THE REGISTERED ELECTORS
OF THE CITY AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON
NOVEMBER 8, 2016, AND CONDUCTED AS A COORDINATED
ELECTION WITH LARIMER COUNTY, ASKING THE VOTERS TO CONFIRM
THAT THE CITY MAY RETAIN AND SPEND ALL REVENUES IT HAS RECEIVED AND
WILL CONTINUE TO RECEIVE RELATING TO THE "KEEP FORT COLLINS GREAT"
.85% SALES AND USE TAX VOTERS APPROVED IN 2010

WHEREAS, on November 2, 2010, the City held a special election conducted as a coordinated election with Larimer County; and

WHEREAS, at that election, the City's electorate considered, and 60% of those voting approved, a ballot question asking whether the City shall increase its taxes in 2011 by an estimated \$18.7 million and by such amounts as generated thereafter by increasing the City's sales and use tax rate from 3.00 % to 3.85% commencing on January 1, 2011, and ending midnight on December 31, 2020, to be spent only for these purposes:

- (a) 33% for street maintenance and repair,
- (b) 17% for other street and transportation needs,
- (c) 17% for police services,
- (d) 11% for fire protection and other emergency services,
- (e) 11% for parks maintenance and recreation services, and
- (f) 11% for other community priorities as determined by the City Council,

which tax rate increase is commonly known as the "Keep Fort Collins Great" tax (the "KFCG Tax"); and

WHEREAS, as a proposed increase in the rate of the City's sales and use tax, the KFCG Tax was required to be approved by the voters under Colorado's Taxpayer's Bill of Rights in Article X, Section 20 of the Colorado Constitution ("TABOR"); and

WHEREAS, the KFCG Tax ballot question voters approved also asked whether "all revenue generated" from the KFCG Tax could be spent for the purposes specified in the ballot question and whether "the full revenues derived from the tax, and investment earnings thereon, may be retained and expended by the City for such purposes, notwithstanding any State revenue or expenditure limitations including but not limited to [TABOR]" ("KFCG Revenue Change"); and

WHEREAS, in the years 2011 to the present, the City has collected over \$144 million of KFCG Tax revenues and spent these revenues for the following purposes as specifically authorized by the voters in the KFCG Tax ballot question:

- (a) Streets. More than 300 lane miles have been resurfaced, and surface patching, centerline marking, sidewalk and concrete work throughout the City has been completed.

- (b) **Other Transportation.** Nine bridges have been designed and/or constructed (including Shields at Rolland Moore, East and West Prospect, and multiple bridges over Arthur Ditch). Safe Routes to School, Neighborhood Plans and Neighborhood Parking initiatives have been designed and implemented. Transfort, the Max and Dial-a-Ride have expanded service, including Saturday and evening trips. Signals and sidewalks have been upgraded throughout the City improving traffic flow and ADA accessibility.
- (c) **Police.** Thirty positions have been added, including 19 sworn police officers. With additional resources, there has been an increase in Community Policing efforts, resulting in reduced call volumes for both neighborhoods and in Old Town.
- (d) **Fire.** The Poudre Fire Authority (“PFA”) has hired 13 firefighters and staffed the South Battalion. Response times have been reduced by more than 2 minutes in PFA’s southern jurisdiction. Funding has also been used to ensure first responders have up-to-date equipment including breathing apparatuses.
- (e) **Parks and Recreation.** Approximately 3,000 scholarships per year have been provided to low-income citizens, Fossil Creek Trail was expanded and connected to Spring Creek trail, more than 4,000 hours per year of Adaptive Recreation programming was provided, and the existing service hours and levels at all City Recreation centers has been maintained. Various park improvements were completed, including Rolland Moore restrooms, Veteran’s Plaza, field lighting and playground equipment upgrades.
- (f) **Other Community Priorities.** Funding has been provided for the Poudre River capital restoration projects, to more than 10 community agencies supporting before and after school care, school lunch programs and meals for low income citizens, the annual 4th of July celebration at City Park, and staffing and supplies to maintain the downtown flowers; and

WHEREAS, a Fort Collins citizen has raised the prospect of a lawsuit against the City under TABOR to require the City to refund a substantial portion of the KFCG Tax revenues the City has already collected and spent for the voter-authorized purposes described above and to require the City to substantially reduce the KFCG Tax .85% rate voters approved in 2010; and

WHEREAS, litigating this issue, rather than promptly presenting a ballot question to the voters for their resolution of the issue, will result in several years of uncertainty concerning how the City should plan and budget for current and future City services and capital projects and whether the City should continue to collect the KFCG Tax; and

WHEREAS, this uncertainty will likely result in an immediate and substantial reduction of City services to the community, particularly those funded with KFCG Tax revenues, which would include: (i) police, fire and other emergency services, (ii) construction, maintenance and operation of streets and transportation services, and (iii) the operation and maintenance of parks and recreation facilities; and

WHEREAS, as with any litigation, the City will also incur its own court costs and attorney fees in defending the lawsuit, and if the City does not prevail, the City might have to pay the plaintiff’s court costs and attorney fees; and

WHEREAS, if the courts require the City to refund taxpayers any amount of the KFCG Tax revenues, the City may also be required to add 10% annual simple interest to that refund amount; and

WHEREAS, the threatened lawsuit relates to two TABOR provisions, one of which, Section 20(3)(b)(iii), required that voters be mailed a notice before the 2010 election to provide them with two different estimates of City revenues in 2011, the first full fiscal year of the proposed KFCG Tax (the "TABOR Notice"); and

WHEREAS, the first revenue estimate in the TABOR Notice was an estimate of the maximum dollar amount the City expected to receive in 2011 from the KFCG Tax, which the City estimated would be \$18.7 million, and the second revenue estimate was an estimate of the City's "fiscal year spending" in 2011 without the KFCG Tax increase, which the City estimated would be \$146.5 million in 2011; and

WHEREAS, in 2011 the City's actual KFCG Tax revenues were \$19.8 million and its "fiscal year spending" without the KFCG Tax revenues was approximately \$160 million; and

WHEREAS, the other related TABOR provision, Section 20(3)(c), provides that if either of these two revenue estimates in a TABOR election notice is exceeded in the first full fiscal year of a tax increase, as occurred with the KFCG Tax, certain excess revenues must be refunded to the taxpayers and the tax increase is thereafter to be reduced, unless there is "later voter approval;" and

WHEREAS, the City believes this "later voter approval" may be satisfied by including in the ballot question for a proposed tax increase language like that in the KFCG Revenue Change quoted above or by a ballot question approved by voters to allow a government more generally to collect, retain and spend all of the TABOR revenues it receives notwithstanding any limitations on those revenues in TABOR, like those in TABOR Section 20(3)(c); and

WHEREAS, in 1997, the City's voters approved a ballot question that has generally authorized the City "to collect, retain and expend the full proceeds of the City's property taxes and all other funds and revenue sources . . . in 1996 and all revenues received in every year thereafter . . . notwithstanding any state revenue or expenditure limitations, including without limitation those contained in [TABOR]" ("General Revenue Change"), which further reflects the intent of the City's voters to exempt all of the City's TABOR revenues from all of TABOR's revenue limitations, including those limitations in TABOR Section 20(3)(c); and

WHEREAS, notwithstanding the voters' approval of the KFCG Revenue Change and the General Revenue Change, questions have been raised recently as to whether these voter-approved waivers of TABOR revenue limitations are sufficient to satisfy the later-voter-approval requirement in TABOR Section 20(3)(c); and

WHEREAS, these questions have arisen largely related to the State of Colorado's November 2015 ballot question for Proposition BB, which asked the State's voters under TABOR Section 20(3)(c) to allow the State to retain and spend the revenues it received in fiscal

year 2014-15 from the marijuana taxes the State's voters approved in Proposition AA at the State's November 2013 election; and

WHEREAS, although the ballot question for Proposition AA contained language approving the waiver of any revenue limitations provided by law for these marijuana tax revenues, much like the City's KFCG Revenue Change language, and in 2005 the State's voters approved Referendum C that generally waived TABOR's revenue limitations for most of the State's future TABOR revenues, like the City's General Revenue Change has done for the City's TABOR revenues, the State nevertheless presented Proposition BB to the voters; and

WHEREAS, the State appears to have done this on the basis of a legal opinion from the Colorado Office of Legislative Legal Services ("LLS"), which provides legal advice to the Colorado General Assembly, that questioned whether these waivers of TABOR revenue limitations by the State satisfied Section 20(3)(c)'s later-voter-approval requirement, although in doing so, the LLS opinion concedes that there is currently no decision by the Colorado appellate courts that squarely addresses the question of what is required for "later voter approval" under Section 20(3)(c); and

WHEREAS, while there are not any judicial decisions squarely addressing this question, the Colorado Supreme Court has in past decisions approved of voters, in various circumstances, waiving the revenue limitations imposed by TABOR for all revenues of a specific tax and even for all of a government's TABOR revenues; and

WHEREAS, considering the clear and all-inclusive language of the KFCG Revenue Change in the KFCG Tax ballot question voters approved in 2010 and the equally clear and all-inclusive language voters approved in the General Revenue Change, it is reasonable to conclude that the City's voters have already and sufficiently determined that they want the City to collect, retain and spend all of the KFCG Tax and any other revenue TABOR Section 20(3)(c) might otherwise require to be refunded, without the electorate having to vote a third time to decide this issue; and

WHEREAS, in addition, the Supreme Court has repeatedly rejected a rigid interpretation of TABOR that would have the effect of working a reduction in government services or unreasonably curtail the everyday functions of government; and

WHEREAS, since lengthy litigation would nevertheless stall current City programs that clearly benefit citizens and taxpayers, the Council has determined that is in the City's best interest to promptly confirm the voters' intent with respect to this matter, rather than allow the uncertainty of litigation to interfere with the City's provision of the services the voters requested through their 2010 approval of the KFCG Tax; and

WHEREAS, in order to eliminate this uncertainty and to also avoid the financial risks to the City that would come with litigating this issue, the City Council finds and determines that it is in the best interest of the City and its taxpayers and is necessary for the public's health, safety and welfare that a ballot question be submitted to the City's electorate as hereafter provided; and

WHEREAS, on August 16, 2016, the City Council adopted on final reading Ordinance No. 097, 2016, calling a special City election to be held on November 8, 2016, to be conducted as a coordinated election with Larimer County; and

WHEREAS, Article X, Section 3 of the Charter of the City of Fort Collins authorizes the City Council to submit any question to a vote of the people at a special election.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings in the recitals set forth above.

Section 2. That there is hereby submitted to the registered electors of the City at the City's special municipal election to be held in conjunction with the November 8, 2016, Larimer County General Election as a coordinated election, the following ballot question:

City-Initiated Question Concerning Whether the City May Keep and Spend All Revenues Related to the "Keep Fort Collins Great" Sales and Use Tax City Voters Approved in 2010

MAY THE CITY KEEP ALL REVENUES FROM THE 2010 VOTER-APPROVED "KEEP FORT COLLINS GREAT" .85% SALES AND USE TAX, AND CONTINUE TO COLLECT THE TAX AT THE .85% RATE AND SPEND ALL 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?

_____ Yes/For
_____ No/Against

Passed and adopted at an adjourned regular meeting of the Council of the City of Fort Collins this 30th day of August, A.D. 2016.





Mayor

ATTEST:



City Clerk