



COUNCIL COMMUNICATION

DATE: June 2, 2010	AGENDA NO. VII. 7. a.	SUBJECT: Reconsideration of Ordinance No. 4-2010, and consideration of setting a referendum election on Ordinance No. 4-2010
Department Head: Erich Schwiesow, City Attorney; Judy Egbert, City Clerk 		
City Manager:  Nathan M. Cherpeski		
PRESENTED BY:		

Recommendation: Unless Council decides to repeal Ordinance No. 4-2010 in its entirety, set the ordinance for a special election to be held on August 10, 2010, in a coordinated election with the primary election.

Background: On March 17, 2010, the City enacted Ordinance No. 4-2010, which approves use of a lease purchase method of financing utilizing a site lease and lease back for a new municipal complex for housing the library, police, fire department, and city hall facilities. The Ordinance set financing parameters of \$700,000 maximum annual payments over a 20 year period. This is based on a maximum principal amount of \$7,960,000 at a maximum interest rate of 5.75%. Actual terms of the financing could be anything up to those maximum figures. The project was put out to bid before the filing of the petition, and the low bid received was \$6,135,000. As proposed to be awarded, with additive and deductive amendments, the bid was \$5,951,000.

On April 16, 2010, a referendum petition to repeal Ordinance No. 4 – 2010 was filed. The petition contains sufficient signatures to require Council to reconsider the Ordinance. Pursuant to the provisions of the Charter, if Council does not decide to repeal the Ordinance, it must schedule an election for the electorate to consider the Ordinance.

CRS § 31-11-110 provides a 40 day protest period to any registered elector to protest the sufficiency of a referendum petition. That 40 day period ran on May 26, and no protests were filed. Accordingly, the Ordinance can now be re-considered. If the ordinance is not repealed on reconsideration, the Charter and CRS § 31-11-105 require that the matter be submitted to the registered electors at a regular or special election held not less than 60 and not more than 150 days after the final determination of petition sufficiency. This means the special election would be set to be held between July 27 (first available Tuesday) and October 19 (last available Tuesday). The municipal election code restricts the scheduling of special elections such that they cannot be held within the 90 days preceding a general election or within 32 days of a primary election. However, the municipal election code allows a special election to be held at the same time and place as a primary election, conducted either as a coordinated election or as a mail ballot election. The only available time for the conduct of the special election that complies with both 31-11-105 C.R.S. and the municipal election code is on the date of the primary, which is August 10, 2010.

If it does not repeal Ordinance No. 4-2010, Council will need to set a ballot question, set August 10 as the date for the special election, and determine to hold the election as a coordinated election with the County Clerk.

Issues Before the Council:

- 1) Consider repeal of Ordinance No. 4-2010
- 2) If not repealed, set a ballot question and title, election date, and method of holding a special election on Ordinance No. 4-2010.

Alternatives:

- 1) Repeal Ordinance No. 4-2010 (See proposed Ordinance No. 12-2010)
- 2) Set Ordinance No. 4-2010 for a special election to be held on August 10, 2010, either as a coordinated election with the primary election, or as a separate mail ballot election (See proposed Resolution No.7). Note that due to staffing and equipment availability, holding the election as a separate mail ballot election on the same date that the primary election is being held is not a practical alternative.

Fiscal Impact: A coordinated election will cost the City approximately \$11,382 as its share of the coordinated election costs. Holding the election as a separate mail ballot election is not a practical alternative.

Legal Opinion:

City Attorney will be available to discuss any legal issues pertaining to these alternatives.

Conclusion: If not repealed, Ordinance No. 4-2010 must be put to an election of the registered voters to be held at the same time as the primary election.