



## WORK SESSION MEMORANDUM

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Work Session Date: July 11, 2017 at 6:00 p.m.  
City Council Chambers  
448 East 1<sup>st</sup> Street, Room 190  
City of Salida, Colorado

To: Mayor and City Council

Re: City Council Work Session

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### I. TABOR Ballot Question – Dee Wisor

## MEMORANDUM

To: Mayor & City Council  
From: Steven G. Rabe, Interim City Administrator  
Date: October 4, 2016

### PRIVILEGED COMMUNICATION

In preparation for finalizing the funding package for the UV disinfection project, and because I am in the midst of preparing the preliminary 2017 Budget, I became concerned about a potential TABOR violation, which is separate and apart from the issue being dealt with the NRCDC loan. I have concluded my look into that alleged violation and confirmed my concerns with Dee Wisor (formerly of Sherman and Howard), a TABOR expert who now works with the law firm Bulter and Snow. If asked, Mr. Wisor would indicate to you all that you are in very capable hands and he is confident in my knowledge of TABOR, in my conclusions and in my suggested course of action. I should add that since it has been my intention to use Dee as Bond Counsel (a letter of engagement for those services should be forthcoming) for the City's upcoming direct loan through the Water & Power Authority, Mr. Wisor was an easy "go-to", which he has been for me for many years. Additionally, the City will likely use him if it decides to move forward with the refinancing of one of the City's debt obligations now that interest rates are sitting at less than 2%.

I'll be as brief as possible -

In 2013, the City received a large grant from the USDA (\$1.715 million) for improvements to the wastewater system. Also, in late 2013, the City received an EIAF grant from DOLA (approximately \$1.4 million) to do improvements to the water system with proceeds received in 2014 and 2015. While the USDA grant is federal, and therefore exempt from TABOR, the proceeds from the DOLA grant were in excess of the 10% TABOR threshold and the City, although apparently never reported by Administration or the City's Auditors, lost its enterprise status for 2015 and 2016. Also interesting is the handling of the utility enterprise, not "enterprises." Section 4-20-30 of the Salida Municipal Code states: "The City Administrator shall maintain, in the accounting records of the City, separate accounts for any and all special funds of the City, including, but not limited to the Conservation Trust Fund, the Water and Wastewater Enterprise Fund and the SteamPlant Event Center Fund." However, back to at least 2010, the City maintained its books as "two separate Funds, but one enterprise", which is entirely inconsistent with the Code, but important in that it can tie back into the TABOR issue.

Loss of "enterprise" status does three (3) things: 1) the City cannot receive loan proceeds from any source without prior approval of the voters; 2) the City should designate a 3% TABOR reserve for all applicable revenues, including in this case, the Water/Wastewater enterprise; and 3) the revenues derived from the Water/Wastewater Fund must be included in the annual revenue limit calculation and is subject to possible refund if said revenue limits is exceeded. Additionally, a concerned citizen has up to four (4) years to file a complaint with regard to an

alleged TABOR violation seeking relief, which would include a 10% penalty. What was also interesting is that, while Salida's voters did approve relief from TABOR through a de-Brucing action, voters did not exempt all revenues or revenue sources from the revenue limit calculation, which means annual revenue limit calculations need to be done because certain revenue, such as fees paid by developers, franchise fee, rents and royalties, etc., must be refunded in a sequent fiscal year if the City's exceeds the revenue limit and does not receive voter approval to retain said excess revenue. Not sure when the last time was that Council saw a revenue limit calculation, but it may have been awhile.

As background, the City's "revenue base" was established at the close of the fiscal year in 2012. It was then allowed to increase using a formula that combines the Denver-Boulder CPI and local growth calculation, which is essentially derived from the change in value in the property tax assessment from year to year. In the instance of the loss of enterprise status, those revenues received by the Water/Wastewater Fund in 2015 are allowed to be added to the revenue base (I can explain why this is important for purposes of a TABOR "timeout" if anyone ever wants to know), but all revenues received in 2016 would be subject only to the increase allowed by the Denver-Boulder CPI and local growth calculation. I didn't do a calculation, and won't know what fiscal to start with anyway, so I can't tell you the potential impact, but I will say that certain revenues sources in the Water/Wastewater Fund suggest growth in revenue of up to 14% over the previous year (2015).

Our attention should now turn to the upcoming UV project and the means, methods and timing of the financing for the project. The City is under some order to deal with disinfection issues and the UV project has been proposed and accepted by CDPH&E as a suitable means to deal with their concerns. From what I'm told, the Division wishes for this project to be completed by mid-2017. To pay for the project, the City has received a \$775,00 EIAF grant from DOLA for construction, a \$120,000 principle forgiveness loan from the Water & Power Authority (Authority) to be used to offset the cost of design and engineering (D&E) and the City is in the last phase of obtaining a direct loan from the Authority for the remainder of the estimated \$2.4 million project.

One key thing must be adhered to and I've already coordinated with the Authority about my intentions so that they may guide the City appropriately subsequent my departure. The City cannot receive any of the \$2.4 million in proceeds in fiscal year 2016! For purposes not worth debating, while the Authority terms the D&E grant as a "principle forgiveness loan", it can be argued that it is indeed a grant. And, coupled with what has been budgeted to receive in 2016, which I presume is the remainder of the proceeds from the 2013 EIAF grant, the City would jeopardize its enterprise status for 2017 and therefore be expected to conduct an election in November 2017 in order to receive the loan. The next thing to be done occurs in 2017 at the conclusion of the 2016 Audit. The City should do a revenue limit calculation, including all non-exempt general fund revenues and revenues from the Water/Wastewater Fund to determine the amount, if any, of excess revenues that will need to be refunded absent a positive vote for retention in the fall of 2017. After that, when the City prepares it 2018 budget, a dedicated 3% reserve must (we could have a debate about this) be established in the Water/Wastewater Fund, similar to what is already done in the General Fund, and then the 2018 revenues from the Fund

would be included in the TABOR revenue limit calculation for 2018, which should have no impact, and everything goes back to normal in 2019.

Butler Snow LLP  
May 28, 2017

ALTERNATIVE 1

WITHOUT RAISING TAX RATES OR LEVYING ANY NEW TAX, SHALL THE CITY OF SALIDA BE AUTHORIZED TO COLLECT, KEEP AND SPEND THE REVENUES IT RECEIVES FROM ALL SOURCES AS A VOTER APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

ALTERNATIVE 2

WITHOUT RAISING TAX RATES OR LEVYING ANY NEW TAX, SHALL THE CITY OF SALIDA BE AUTHORIZED TO COLLECT, KEEP AND SPEND THE REVENUES IT RECEIVES FROM ALL SOURCES AS A VOTER APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND TO SPEND SUCH REVENUES FOR THE FOLLOWING PURPOSES \_\_\_\_\_?

ALTERNATIVE 3

WITHOUT RAISING TAX RATES OR LEVYING ANY NEW TAX, SHALL THE CITY OF SALIDA BE AUTHORIZED TO COLLECT, KEEP AND SPEND THE REVENUES IT RECEIVES FROM ALL SOURCES AS A VOTER APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION BEGINNING JANUARY 1, 2018 AND ENDING DECEMBER 31, \_\_\_\_\_?

ALTERNATIVE 4

WITHOUT RAISING TAX RATES OR LEVYING ANY NEW TAX, SHALL THE CITY OF SALIDA BE AUTHORIZED TO COLLECT, KEEP AND SPEND THE REVENUES IT RECEIVES FROM THE FOLLOWING SOURCES \_\_\_\_\_ AS A VOTER APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND TO SPEND SUCH REVENUES FOR THE FOLLOWING PURPOSES \_\_\_\_\_ BEGINNING JANUARY 1, 2018 AND ENDING DECEMBER 31, \_\_\_\_\_?

ALTERNATIVE 5

WITHOUT RAISING TAX RATES OR LEVYING ANY NEW TAX, SHALL THE CITY OF SALIDA BE EXEMPT FROM THE VOTER APPROVAL REQUIREMENTS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION BEGINNING JANUARY 1, 2018 AND ENDING DECEMBER 31, 2021?

ALTERNATIVE 6

WITHOUT RAISING TAX RATES OR LEVYING ANY NEW TAX, SHALL THE CITY OF SALIDA BE AUTHORIZED TO RETAIN AND SPEND ALL CITY REVENUES IN EXCESS

OF THE CONSTITUTIONAL LIMITATION ON CITY FISCAL YEAR SPENDING FOR THE NEXT \_\_\_ YEARS BEGINNING JANUARY 1, 2018, AND TO RETAIN AND SPEND AN AMOUNT OF CITY REVENUES IN EXCESS OF SUCH LIMITATION FOR YEAR BEGINNING JANUARY 1, 2\_\_\_\_AND FOR EACH SUCCEEDING YEAR UP TO THE EXCESS CITY REVENUES CAP, AS DEFINED IN RESOLUTION NO. \_\_\_\_\_ ADOPTED BY THE CITY COUNCIL?

<b>December, 2016</b>		
7-December (Wednesday)	First date for meeting of the title board. (No sooner than the first Wednesday in December after an election).	1-40-106(1)
8 -December (Thursday)	Last day for the Secretary of State to compile and total returns from all counties and complete statutory recounts, if any. (30 days after the General Election)	1-10-103(2) 1-10.5-102(2)
9 -December (Friday)	Last day an interested party may request a recount of the results of the General Election at their own expense. (Within 31 days after the election)	1-10.5-106(2)
15 -December (Thursday)	Last day to complete a requested recount by an interested party. (No later than the 37th day after the General Election)	1-10.5-106(2)
<b>January, 2017</b>		
6 -January (Friday)	Last day for county clerk and recorder to generate a list of electors within the county who submitted more than one ballot for the election (Not later than sixty days after a state election)	1-2-305 1-1-106(5)
10 -January (Tuesday)	Last day for state office holders/appointees to file personal financial disclosures, or update form.	24-6-202(4) 1-1-106(5)
11 -January (Wednesday)	Last day for General Assembly to convene 2017 regular session.	Art. V, Sect. 7
<b>February, 2017</b>		
6 -February (Monday)	Deadline for the county clerk and recorder to provide the county chairpersons of the major political parties with a list of records cancelled under the NVRA. (no later than 90 days after the general election)	1-2-605(8)
<b>March, 2017</b>		
1 - March (Wednesday)	Deadline for the Secretary of State to distribute a free list of who voted in the 2016 general election to each major and minor political party. (no later than March 1 following the general election)	1-2-305(4)
<b>April, 2017</b>		
7 -April (Friday)	Last day to submit a draft to the Secretary of State of a 2017 proposed initiative to be heard by the Title Board if the initiative is to be voted on in November. (by 3:00pm, 12 days before the last Title Board Hearing)	1-40-106(1)
19-April (Wednesday)	Last Title Board Hearing for measures that will appear on the 2017 Coordinated election ballot.	1-40-106(1)
<b>May, 2017</b>		
10 -May (Wednesday)	The General Assembly must adjourn no later than this date. (regular sessions must not exceed 120 calendar days)	Art. V, Sect. 7
<b>June, 2017</b>		
1-June (Thursday)	Last day for the Secretary of State to notify county clerks of qualified political organizations' loss of qualified status. (no later than June 1 of each odd-numbered year)	Rule 3.7
<b>July, 2017</b>		
28 -July (Friday)	If a political subdivision has taken formal action to participate in the Coordinated Election, it must notify the county clerk in writing. (100 days before the election, if the governing body has taken formal action)	1-7-116(5) 1-1-106(5)
<b>August, 2017</b>		
7-August (Monday)	Last day to file an initiative petition with the Secretary of State for the 2017 Coordinated Election. (no later than 3:00 PM, at least 3 months before the election) Last day to file an addendum to a previously filed initiative petition that was deemed insufficient. (within 15 days after determination of insufficiency, but no later than 3:00pm at least 3 months before the election)	Art. V, Sect. 1(2) 1-40-108 Art. V, Sect. 1(2); 1-40-117(3)(b)
9-August (Wednesday)	Last day for the county clerk to submit a mail ballot plan and a watcher accommodation plan to the Secretary of State. (no later than 90 days before the election)	1-7.5-105(1) Rules 7.1.1, 8.7
	Last day to designate Voter Service and Polling Centers and Drop Off Locations for the 2017 Coordinated election and submit accessibility surveys to the Secretary of State. (no later than 90 days before the election)	Rules 7.9, 7.10
24-August (Thursday)	First day a candidate for the office of school district director may circulate a nomination petition. (no sooner than 90 days before the election)	1-4-803(1)(b)
29-August (Tuesday)	Last day for the Secretary of State to give written approval or disapproval to a submitted mail ballot plan, if the plan was filed on August 9th. (within 15 days after submission of the plan)	1-7.5-105(2)(a) Rule 7.1
	Deadline for the county clerk and coordinating political subdivisions to sign intergovernmental agreements for the 2017 Coordinated Election. (no later than 70 days before the election)	1-7-116(2)
<b>September, 2017</b>		
1-September (Friday)	Last day for candidates for the office of school district director to file a nomination petition. (no later than 67 days before the election)	1-4-803(2)
	Last day to file an affidavit of intent to run as a write-in candidate for a non-partisan coordinated election. (by close of business on the 64th day before the election)	1-4-1102(2) 1-1-106(5)
5-September (Tuesday)	Last day to approve ballot language by resolution to be included on the November ballot.	
6-September (Wednesday)	Last day for the Secretary of State to issue statements of sufficiency or insufficiency for initiative petitions filed on August 7th. (no more than 30 calendar days after the petition is filed)	1-40-116(2)
	Last day for major political parties to provide an adequate list of election judges to the county clerk. (no later than 60 days before the election)	Rule 6.1.3
	Last day for the designated election official from each political subdivision that intends to conduct an election to certify the ballot content. If the election will be coordinated with the county, the certification must be delivered to the county clerk and recorder of each county that has territory within the political subdivision. (no later than 60 days before the election)	1-5-203(3)(a)
	Deadline for the county clerk to file security and contingency plans with the Secretary of State. (no later than 60 days prior to the first election where the procedures will be used)	1-5-616(5)(b)

8-September (Friday)	Deadline for the county clerk to begin video surveillance of designated areas for the Coordinated Election (at least 60 days before the election)	Rule 20.7.2
11-September (Monday)	Last day for the Secretary of State to send notice and certification of the Coordinated election ballot to the county clerks. (no later than the 57th day before the Coordinated Election)	1-5-203(1)
13-September (Wednesday)	Last day for the designated election official to submit a mail ballot plan to the Secretary of State to conduct a nonpartisan election by mail ballot if the jurisdiction is not coordinating with the county clerk. (no later than 55 days before the election)	1-7.5-105(1)
22-September (Friday)	Last day to file pro/con comments pertaining to local ballot issues with the designated election official in order to be included in the ballot issue notice. (the Friday before the 45th day before the election)	1-7-901(4)
23-September (Saturday)	Deadline to send mail ballots to military and overseas electors. (no later than 45 days before the election)	1-8.3-110(1)
	First day that the county clerk may hold election judge training.	1-6-101(5)
25-September (Monday)	Last day for a petition representative to submit a summary of comments in favor of their local ballot issue. (no later than 43 days before the election)	1-7-903(3)
26-September (Tuesday)	Last day for the designated election official to deliver ballot issue notices to the county clerk. (no later than 42 days before the election)	1-7-904
28-September (Thursday)	Last day for the designated election official to order registration and property owner records for use by election judges in a local election that is not coordinated with the county. (no later than the 40th day before the election)	1-5-303(1) 1-5-304(1), (2)
	Last day for the Secretary of State to give written approval to a mail ballot plan submitted by a designated election official for a nonpartisan election, if plan was filed on September 13th. (within 15 days after submission of the plan)	1-7.5-105(2)(a)
<b>October, 2017</b>		
3-October (Tuesday)	Last day for county clerks to provide a list of election judges, including political party affiliations, if known, to each appointing party. (no later than 35 days before election day)	Rule 6.1.4
6-October (Friday)	Last day to mail notice of election for ballot issues. (At least 30 days before a ballot issue election)	Art. X, Sect. 20(3)(b) 1-1-106(5)
	Last day for the Legislative Council staff to print and distribute the ballot information booklet for statewide measures to active registered voters. (At least 30 days before the election)	Art. V, Sect. 1(7.5)(b) 1-1-106(5)
	First day a county must be able to issue a mail ballot to a voter who requests one in person at the county clerk's office or the other office designated in the county's mail ballot plan. (32 days before the election)	Rule 7.2.7 1-7.5-107(2.7)
13-October (Friday)	Deadline to complete changes in the boundaries or division of precincts for nonpartisan elections. (No later than 25 days prior to the election)	1-5-104(1)
16-October (Monday)	Last day to submit an application to register to vote through a voter registration drive for the Coordinated Election. (No later than 22 days before the election)	1-2-201(3)(b)(l)
	First day mail ballots may be sent to voters, except for UOCAVA voters.	1-7.5-107(3)(a)
17-October (Tuesday)	Last day for counties to submit zero result files (data entry counties) or a document listing all ballot content (manual entry counties) to the Secretary of State for Election Night Reporting. (No later than 21 days before the election)	Rule 11.10.2
18-October (Wednesday)	Last day for the designated or coordinated election official to publish notice of the coordinated election. (no later than 20 days before the election)	1-1-104(34) 1-5-205(1)
	Deadline for the designated election official to mail a copy of the notice of election to the county clerk of each county in which the political subdivision is located if the election is not coordinated by the county. (no later than 20 days before the election)	1-5-205(1),(2)
	Last day to post Voter Service and Polling Center, Polling Location, and Drop-off signs for the Coordinated Election. (at least 20 days before the election)	1-5-106
20-October (Friday)	Deadline for the county clerk to send mail ballot packets to each active eligible elector for the Coordinated Election. (no later than 18 days before the Election)	1-7.5-107(3)(a)(l)
23-October (Monday)	Last day to appoint board of canvassers for a nonpartisan election that is not coordinated by the county. (at least 15 days before any nonpartisan election)	1-10-201(1)
	Last day for county chairpersons of major political parties to certify appointment of registered electors to serve as members of canvass board for statewide ballot measure in 2017 Coordinated Election; members of canvass board for other ballot content will be appointed in accordance with intergovernmental agreement (at least 15 days before election).	Election Rule 4.3.3 1-5-205(1.3) 1-10-202
	Counting of mail ballots may begin. No results may be disclosed until after 7:00pm on Election Day. (15 days prior to the election)	1-7.5-107.5
27-October (Friday)	Equipment inventory lists due to the Secretary of State. (no later than 10 days before the election)	Rule 11.2.3 1-1-106(5)
	The election notice must be posted in the designated election official's office. (at least 10 days before the election and until 2 days after the election)	1-5-205(1.3) 1-1-106(5)
30-October (Monday)	Last day to submit an application to register to vote through the mail, a voter registration agency, a local driver's license examination facility, or online to receive a mail ballot for the Coordinated Election. (through the 8th day prior to the election)	1-2-201(3)(b)(III) 1-2-201(4) 1-2-508(3)(a)(I)
	First day Voter Service and Polling Centers must be open (At least 8 days before and on election day, except Sunday)	1-7.5-107(4.5)(c)
31-October (Tuesday)	Elections Setup Records are due to the Secretary of State for the Coordinated Election. (No later than 5:00pm on the 7th day before the election)	Rule 11.4
<b>November, 2017</b>		



3-November (Friday)	First day Drop-off locations must be open. (At least 4 days before election day, including Saturday)	1-7.5-107(4.3)(b)
7 -November (Tuesday)	<b>Coordinated Election</b> (Polls open 7:00am to 7:00pm. First Tuesday in November)	Art. X, Sect. 20(3)(a) 1-1-104(6.5) 1-7-101 1-41-102(1)
	All ballots must be in the hands of the county clerk by 7:00pm on election day in order to be counted. Ballots cast by military and overseas voters must be sent no later than 7:00pm on election day and received by the close of business on the 8th day after the election.	1-7.5-107(4)(b)(II) 1-8.3-111 1-8.3-113 (1), (2)
9-November (Thursday)	Deadline for the Secretary of State to notify counties of the voting devices and races selected for auditing purposes. (Within 48 hours after the close of polls)	Rule 11.3.3(a)
	Deadline for the county clerk to send missing signature, signature verification, and missing ID letters for mail and provisional ballots. (within 3 days from signature/ID verification but no later than 2 days after election day)	1-7.5-107(3.5)(d) 1-7.5-107.3(2)(a) 1-8.5-105(3)(a)
15-November (Wednesday)	Last day for ballots cast by military and overseas electors to be received by the county clerk in order to be counted. (no later than the 8th day after election day)	1-8.3-113(2) 1-1-106(4)
	Last day for elector to cure signature discrepancy or missing signature, or to provide missing ID for mail and provisional ballots to be counted. (within 8 days after election day)	1-7.5-107(3.5)(d) 1-7.5-107.3(2)(a) 1-8.5-105(3)(a)
21-November (Tuesday)	Last day for verification and counting of provisional ballots to be completed. (within 14 days after election day)	1-8.5-105(5)
24-November (Friday)	Deadline to complete the canvass for the Coordinated Election. (no later than the 17th day after the election)	1-10-102(1)
	Deadline for the county clerk to report the results of the post-election audit to the Secretary of State. (no later than 5:00pm on the last day to canvass)	Rule 11.3.3(f)
27-November (Monday)	Deadline to submit official Abstract of Votes for the Coordinated Election to the Secretary of State. (no later than the 18th day after the election)	1-10-103 1-1-106(5)
	Deadline to upload the final canvass results to the ENR system. (by close of business on the first business day after the statutory deadline for completing the canvass)	Rule 11.10.5
<b>December, 2017</b>		
7-December (Thursday)	Last day for the Secretary of State to compile and total returns from all counties and order appropriate recounts, if any. (No later than the 30th day after the Coordinated Election)	1-10-103(2) 1-10.5-102
8-December (Friday)	First day the county clerk may stop video surveillance of designated areas for the Coordinated Election. (through at least 30 days after the election, unless there is a recount)	Rule 20.7.2
	Last day an interested party may request a recount of the results of the Coordinated Election at their own expense. (within 31 days after the election)	1-10.5-106 (2)
14-December (Thursday)	Last day to complete a requested recount. (no later than the 37th day after the Coordinated Election)	1-10.5-106 (2)
*	Following the election, the county clerk must report to the Secretary of State in writing the number of ballot return envelopes with discrepant signatures that the clerk forwarded to the district attorney for investigation.	Rule 7.8.13
<b>January, 2018</b>		
1-January (Monday)	Deadline to be affiliated with a major or minor party to run as a party candidate. (Note: For major-party assembly designation, this deadline may be dictated by party rules.) Deadline to be unaffiliated to access the ballot by petition as an unaffiliated candidate.	1-4-601(4)(a) 1-4-801(3) 1-4-802(1)(g)(II) 1-4-1304(2)(b)
10-January (Wednesday)	General Assembly to convene 2018 regular session.	Art. V, Sect. 7
12-January (Friday)	Deadline to submit a petition to qualify as a minor political party. (Must be signed by at least 10,000 registered electors and submitted to the Secretary of State no later than the second Friday in January)	1-4-1302(1)
<b>February, 2018</b>		
2-February (Friday)	Last day for Secretary of State to issue a statement of sufficiency/insufficiency regarding petition to qualify as a minor political party, if petition is received on January 12 (No later than 21 days after receipt)	1-4-1302(4)(b)
*	An insufficient petition to qualify as a minor political party may be amended once prior to 3 p.m. on the 7th day after the notice of insufficiency.	1-4-1302(4)(c)