



Finance Administration

215 N. Mason
2nd Floor
PO Box 580
Fort Collins, CO 80522

970.221.6788
970.221.6782 - fax
fcgov.com

AGENDA
Council Finance & Audit Committee
June 15, 2020
10:00 am - noon
Zoom Meeting <https://zoom.us/j/8140111859>

Approval of Minutes from the May 18, 2020 Council Finance Committee meeting.

- | | | |
|--|----------|---------------|
| 1. 2020-2021 Budget & Financial Update | 30 mins. | T. Storin |
| 2. Impacts of Wayfair Court Decision / Opportunities to City | 30 mins. | J. Poznanovic |

Council Finance Committee
Agenda Planning Calendar 2020
 RVSD 06/10/20 ck

June 15th			
	2020-2021 Budget and Financial Review Update	30 min	T. Storin
	Impacts of Wayfair Court Decision / Opportunities to City	30 min	J. Poznanovic

July 20th			
	2020-2021 Budget and Financial Review Update	30 min	T. Storin
	BFO Assumption Review		L. Pollack
	Code Revisions for Self-Insurance Fund	15 min	T. Storin J. Duval
	Parks & Recreation - Master Plan - Funding Considerations	30 min	J. Stokes H. Depew
	B-Dam Alternatives and Recommendation	30 min	T. Connor

Aug. 17th			
	Parking Fund	30 min	N. Currell

Sept. 21st			
	Annual Adjustment Ordinance		

Oct. 19th			
	Utility Rebate Consolidation	20 min	J. Poznanovic

Future Council Finance Committee Topics:

- Park/Median Design Standards & Maintenance Costs – TBD
- Metro District Policy Update – TBD 2020



Finance Administration
215 N. Mason
2nd Floor
PO Box 580
Fort Collins, CO 80522
970.221.6788
970.221.6782 - fax
fcgov.com

Finance Committee Meeting Minutes

May 18, 2020

10 am - noon

Zoom Meeting

Council Attendees: Mayor Wade Troxell, Ross Cunniff, Ken Summers

Staff: Darin Atteberry, Kelly DiMartino, Travis Storin, Carrie Daggett, John Duval, Tyler Marr, Nina Bodenhamer, Caryn Champine, Dean Klingner, Noelle Currell, Drew Brooks, Chad Crager, Theresa Connor, Brad Buckman, Daniel Woodward, Blaine Dunn, Kelley Vodden, Lawrence Pollack, Cody Forst, David Lenz, Jo Cech, Janet Freeman, Teresa Roche, Brad Buckman, Sierra Anderson, Carolyn Koontz

Others: Kevin Jones, Chamber of Commerce

Meeting called to order at 10:03 am

Approval of Minutes from the April 20, 2020 Council Finance Committee Meeting. Ken Summers moved for approval of the minutes as presented. Ross Cunniff seconded the motion. Minutes were approved unanimously.

A. 2020-2021 Budget & Financial Update

Travis Storin, Interim CFO

EXECUTIVE SUMMARY

The purpose of this agenda item is to review:

- The early known financial impacts of the COVID-19 pandemic
- The projected 2020-2021 financial scenarios
- Staff governance of the associated recovery work
- Staff recommendations on use of reserves
- Progress against the financial scenarios and remaining shortfall

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

- Does the Committee have specific comments or questions for staff?
- Does the Committee have guidance or input regarding the use of reserves?

BACKGROUND/DISCUSSION

April Tax Collections

As discussed with Finance Committee early in the pandemic, staff anticipates that the general economic impacts of the COVID-19 pandemic to have a severe impact to City revenues. While those impacts are still difficult to

quantify, April financial results represented the first firm data point for gaining this understanding. The below table summarizes April sales and use tax (collections in April on March taxable sales):

APRIL SUMMARY OVER PRIOR YEAR

	Month	Year to Date
Net Sales Tax Collected:	-7.7%	1.0%
Net Use Tax Collected:	-28.4%	-19.6%
Net Sales and Use Tax Collected:	-11.3%	-2.5%

Year to date, sales and use tax collections excluding rebates are down 2.5% and total \$45.3M.

APRIL SUMMARY OVER BUDGET

	Month	Year to Date
Net Sales Tax Collected:	-10.0%	-0.5%
Net Use Tax Collected:	-14.7%	-6.0%
Net Sales and Use Tax Collected:	-10.7%	-1.3%

Year to date, the City has collected 1.3% less sales and use tax revenue, totaling \$586K under budget.

Given that the stay-at-home orders and general economic halt did not take hold until mid-to-late March, an 11% contraction of sales/use tax collections in April indicates a potential 20+% contraction for May.

Staff Response Plan

Staff has laid out the below multi-point budget recovery plan across six workstreams:

Workstream	Lead	Status
Analysis & Forecasting	David Lenz	Reported to ELT 5/6
Cost Initiatives / Service Adjustments	Jo Cech	5/14 BLT Session
Workforce Alternatives	Karen Burke	5/14 BLT Session
Budget Process	Lawrence Pollack	Sellers kick-off 5/11
Federal & State Aid	SeonAh Kendall Blaine Dunn	Reported to 4/15; Sponsor update on 5/19
Communications	Amanda King	Multi-part Coloradoan series began 5/17

Current shortfall projections

As part of the Analysis & Forecasting workstream, staff has developed a revenue forecasting model that allows for individual risk adjustment of approximately 200 different revenue streams across multiple scenarios. The below table represents the four scenarios staff has developed:

Item	Scenario A	Scenario B	Scenario C	Scenario D
2Q Economic Downturn	(10%)	(15%)	(20%)	(25%)
Downturn months	3	4	5	5
Recovery months	4	4	6	9
Recovery level (% of base)	95%	95%	92.5%	90%
Sales Tax 2020 (% change)	(11%)	(15%)	(19%)	(22%)
Use Tax 2020 (% change)	(11%)	(16%)	(22%)	(25%)
2020 Revenue Shortfall	(\$25 M)	(\$34 M)	(\$46 M)	(\$53 M)
2021 Revenue Shortfall	(\$13 M)	(\$14 M)	(\$21 M)	(\$30 M)

Considering continued uncertainty, staff is maintaining all four scenarios are possible. May results, reported in early June, will heavily inform which scenario is most probable. For purposes of the current contingency planning work, staff is focused on Scenario C based on April results and because it will lead scalable recovery options applicable across multiple scenarios.

Use of reserves

Industry best practices are heavily focused on prescriptive or formulaic maintenance of minimum reserve balances. However, those best practices are generally silent on advising use of those reserves. As a result, staff has established a set of judgmental operating principles. The three possible reserve options are:

- Match staff-identified budget cuts
- Backfill our one-time losses vs. the ongoing shortfall
- Backfill the 3-month deficit experienced during Q2 from reserves; balance the 2020 budget for July-December.

For each option, it's a core operating principle to draw only an amount that can be reasonably repaid within a 3-5-year window starting in 2022.

2020 Scenario Progress

In the weeks since this work has begun, staff has identified \$19M in backfill for the 2020 shortfall prior to the use of reserves. Focusing on Scenario C and the use of \$10.4M in reserves, there is an estimated remaining revenue gap of \$16.9M.

	Scenario A	Scenario B	Scenario C	Scenario D
2020 Revenue Shortfall*	\$25M	\$34M	\$46M	\$53M
Federal and State COVID-19 Funding	\$6.5M	\$6.5M	\$6.5M	\$6.5M
Spending Reductions: Non-Personnel (Tier 1)	\$8.7M	\$8.7M	\$8.7M	\$8.7M
Furloughs and Hiring Freezes	\$3.5M	\$3.5M	\$3.5M	\$3.5M
Use of Reserve Funding	\$6.3M	\$10.4M	\$10.4M	\$10.4M
Program and Service Adjustments				
Organization-wide Personnel Impacts				
Subtotal	\$25.0M	\$29.1M	\$29.1M	\$29.1M
Remaining Gap	--	\$4.9M	\$16.9M	\$23.9M

Staff is transitioning its efforts toward budget adjustments that may have a service level or program impact. The remainder of May will be spent on establishing a portfolio of options that over-solve for the gap by a multiple of 2, so that multiple options/configurations can be considered in how to make up the remaining \$17M.

Next steps

The trigger points for executing on budget cuts with a significant impact to services, employees, or the community are in June at the earliest. In the meantime, staff is carefully putting together its contingency plan for each of the four scenarios. The Budget Lead Team is meeting for 2-hour work sessions throughout May and June and is driving toward a balanced 2020-2021 by July so as to satisfy the Charter-required City Manager's Recommended Budget in time for Labor Day.

DISCUSSION / NEXT STEPS;

Wade Troxell; do you have any projections?

Dave Lenz, there is a report that the US Census Bureau puts out – this was just released on Thursday of last week and gives an indicator of what the national numbers are expected to look like for this past month- those numbers are significantly higher which is what we expected - 22% down across all categories. We projected what we saw locally and this was a pretty good indicator - will be the next real data point- advanced indicator showing a significant amount for the whole month - this is a survey and not comprehensive

Darin Atteberry; Travis, can you share what Jennifer shared at the DDA on Thursday? Insights might be helpful as downtown goes.

Travis Storin; we break off some additional reporting for the DDA Board – showing that the downtown area was experiencing a contraction which was roughly double the size of the city at large includes many parts of the College corridor even outside of downtown - getting hit harder.

Mayor Troxell; Hero's Act - is our allocation currently slated at combining Scenario C and D together?

Travis Storin; if that act was passed it would go a long way toward helping address the issues we are facing.
A couple disclaimers I would offer;

- 1) The Act has a long way to go in the legislative process and the ultimate presidential approval that would need to take place
- 2) As helpful as that would be – it is important that we are all operating with the understanding of the overall reset of the economy that will need to take place – we treat those grants as a one-time award – we know that there would still be an ongoing gap.

Dave Lenz; In any of these scenarios what is the shape of the curve? we have not modeled a second dip if we have a virus recurrence - taking a look at what that would mean for 2021 numbers is on our to do list.

Travis Storin; slide #12 All Government Funds - Fund Balances - note that the 2019 audit is still underway – as a result, numbers are published on a draft basis. This month's report out – we would solicit any feedback you would have on use of those reserves – we have encountered a great deal of industry guidance and best practices – there is a tremendous amount of knowledge out there in terms of how much to hold in reserves but less on the appropriate and the amount to draw – we have some ideas we would like to share with you and solicit your feedback.

Ken Summers; does that include the TABOR reserve?

Travis Storin; top 2 rows; Emergency -\$7 - \$7.5M dollars in TABOR reserves - TABOR payback obligation - must be replenished within the next fiscal year.

Ross Cunniff; 1-2 years to replenish it depending on when we drew it down - that is \$8.xM - a quarter of this amount

Ken Summers; Are funds really available when it says 'available with some constraints'?

Travis Storin; it depends - a couple of examples might be helpful for clarification
\$3M of the KFCG Fund - that can be used for any of 6 categories that were on the KFCG ballot so it is characterized as available with some constraints - contrast that with the \$21M showing for the Capital Expansion Fund – that is going to be much more restrictive. The \$65M would be our worst possible case scenario ceiling.

Ken Summers; it sounds like we are probably in a better position than most municipalities in terms of maintaining TABOR reserves and looking at what is available beyond that especially if it is spread out over a couple of years.

Ross Cunniff; TABOR reserves would be if we move above 25% - we should plan to not use it at the 20% level

ACTION ITEM

Ross Cunniff; All Funds slide - add one more row totaling up available for shortfall - what is easily available for shortfall - call out constraints

Travis Storin; we have not located a ton of prescriptive guidance on how to do this so heavy amount of judgment involved -

A couple operating principles: we want to make sure we can lay out a path to replenish those reserves – What is at stake – many of our large capital projects initiatives were slated to be funded from reserves

Payback sooner than 5 years so we can get back on track with our goals - we can reasonably expect to pay back approximately \$5M per year (range between \$4-6M). Scenarios C - we have identified a path that would address \$29.1 - \$38.1M of the gap depending on how much we draw from reserve balances - so the remaining gap for 2020 is \$7.9M to \$16.9M.

Ross Cunniff; we are going to have to do something about the remaining gap for 2020 – Scenario C

Travis Storin; that is right - takeaways from our discussion today about our next steps as a staff including identifying a portfolio of initiatives that would solve the remaining \$17M if executed on.

Ken Summers; if we have \$55M available - I would be comfortable doing more than less - trying to see where we are at as we approach 2021 - as Darin has mentioned this is not a rainy day - this is a tsunami or hurricane.

Lawrence Pollack; (text from chat) - It may also be helpful to put 2020 into context with 2021 anticipating a \$21M ongoing shortfall that will need to be 'right-sized' Any use of reserves in 2021 to balance that shortfall implies additional reductions would then also be necessary in 2022.

Ross Cunniff; I would rather have the \$17M identified in cuts then we can add back in as we debate instead of coming to us with \$8M.

Travis Storin; one round drives us toward the more conservative menu of initiatives we might present you to close out the remaining gap.

Ross Cunniff; would be great if this was the nail in the coffin for the routine use of overtime.

Travis Storin; one exception to point out within our payroll function we have been using a fair amount of overtime - make sure our managers know the service level impacts if we removed the overtime – as a general rule of thumb we are adding that prescriptive guidance.

Darin Atteberry; over the few years we have added some stringent requirements and caps on OT for an individual. An exception would require Service Area Director and City Manager approval. There have been a few exceptions but we really have curtailed that.

Ross Cunniff; I appreciate that we were using it a lot more than we are now - I would like to further ramp that down to as close to zero as possible – of course, there will be exceptions in the case of an emergency.

Mayor Troxell; BFO process has already put priorities in place - How does that play in terms of how we are looking at that now?

Travis Storin; Darin and I were on a call with Bloomberg - Mayor, you may have been on the call as well – the idea of the call was governments taking the approach of concept of converting compensation to activities. Unfortunately, BFO - we know how much our programs and outcomes cost. The go forward step on how we close the \$17M will be highly driven by the work that been done in prior BFO cycles around cost and regarding prioritization.

Mayor Troxell; great foundational work - outcomes are a real hallmark of how we have been doing our budgeting.

Ken Summers; budget cuts - what are DBA cards used for? \$70k for Wellness programs - multiplying effect of what we do - spent downtown - helps business – sales tax revenue - not sure how we quantify the benefit? Employee morale in a downturn and stimulate business activity doesn't seem to be frivolous. Be creative in addressing those needs and ways to continue to show appreciation. Investment not expense.

Darin Atteberry; If an employee gets a \$25 DBA card that does help the business community - if that goes away from the city does that hurt businesses?

On-line health assessments example – employees receive a \$50 DBA card for completing the assessment - \$65k is nothing compared to the cost of an identifying an early cancer case or preventing a heart attack. We also award DBA cards for service milestones – 25 years, etc. - think this does have a ripple effect. An investment.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

- Does the Committee have specific comments or questions for staff?
- Does the Committee have guidance or input regarding the use of reserves?

ACTION ITEM;

Ross Cunniff; desired monthly cadence for updates - at least each time we get a new Sales and Use Tax Report it would be useful to have an ongoing graph that shows 3 lines - 1) revenue decline over time including most recent data point, 2) showing budget reductions over time and 3) the decline in our reserves over time – dashboard type report - see how we are doing to be Sent to Council - a chart illustrating running revenue decline until things turn around and show reductions that we are matching / not matching over time not just a point in time. I would offer to help and to review format, etc.

Mayor Troxell; that is good - tomorrow I will be joining a press conference with Rep Neguse -so that I represent the most accurate recent revenue recovery - still on what we have stated earlier - I have that one pager that I used previously - would like to make sure that is up to date with regards to the Hero's Act.

Darin Atteberry; we are happy to help

ACTION ITEM:

Darin Atteberry; So good to have Council Finance as a resource, leveraging Ken, Ross and Wade. I want to make sure that we don't leave the other 4 Councilmembers behind. We may want to think about maybe an info graphic, a piece that we do that is not deeply embedded in the Council Finance Committee documents. How do we take our current thinking in a normal, routine calendar basis and share it with Council for them to use in conversation with constituents and citizens. I want to make sure our other 4 Councilmember are up to date. Maybe work with Amanda and Kelly DiMartino on how to do something more regular than once a month - I don't think this is necessarily generating new work – a format that might be relevant and helpful as they are having their conversations.

Mayor Troxell and Darin Atteberry; this is good – this will be a bigger issue when it becomes clear what other places are doing including CSU and others are doing - preparing for that in an ongoing way is an excellent idea.

B. MMOF Grant - W. Elizabeth Design

Noelle Currell, Manager, FP&A PDT

Drew Brooks, Transfort & Parking Director

SUBJECT FOR DISCUSSION:

West Elizabeth Enhanced Travel Corridor Multi-Modal Options Funding Grant Appropriation

EXECUTIVE SUMMARY

The West Elizabeth travel corridor is currently the highest priority pedestrian/alternative mode area for improvement in the City and was highlighted in City Plan and the Transit Master Plan. The City was awarded a \$750,000 Multi-Modal Options Funding (MMOF) grant from the North Front Range Metropolitan Planning Organization (NFRMPO) to help complete 30% design of the project. Colorado State University (CSU) has appropriated \$375,000 to help fulfill the grant match requirements. The City will be required to bring \$375,000 in local funds to fulfill the total match and complete the \$1.5M design.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Is Council Finance supportive of an out of cycle supplemental appropriation for the Multi-Modal Options Fund (MMOF) and required local match to complete 30% design for West Elizabeth Enhanced Travel Corridor?

BACKGROUND/DISCUSSION

MMOF Background

In December 2019, the NFRMPO did a call for projects for the MMOF grants. The City was awarded all 4 projects for which is applied.

Projects include:

- West Elizabeth 30% Design – Award \$750,000
- Transfort Compressed Natural Gas Bus Replacements - \$908,091
- Siphon Overpass - \$500,000
- Laporte Avenue - \$250,000

Both the Siphon Overpass and the Laporte Avenue Grant Appropriations and related Intergovernmental Agreements (IGA) will be brought forward for review in Spring 2021. The bus replacement IGA and corresponding appropriation will be brought forward on consent as no additional matching funds are required.

West Elizabeth Corridor Background

- The West Elizabeth Corridor is currently the most productive transit area and one of the highest pedestrian use areas within the City.
- It has more passengers per revenue hour than Max and there are often times where “trailer” buses are required in order to accommodate all the passengers.
- Most passengers are going to/from CSU. This includes CSU’s foothills campus which is harder for Transit to access due to the limited ability to turn buses around at Overland Trail.
- Current bike/ped count data show extremely high usage and potential for modal conflict at the major intersection of W. Elizabeth and City Park Ave (see Attachment 2 for August 2019 traffic pattern and bike/ped data).

Design along this corridor is expected to allow for safer travel for all modes and a more direct route for buses which will include a turn around at the end of Elizabeth which could help lead to some route consolidation.

Due to the many factors and current condition of this corridor, it is one of the top priority areas for improvement within the City and has specifically been highlighted in the Transit Master Plan as the highest priority project.

Staff is recommending doing the appropriation currently for several reasons:

- There is an extremely long lead time between 30% Design and final project completion.
- 30% Design completion will enable the City to submit for the Federal Transit Authority (FTA) Small Starts grant program; historically, projects have not been able to request this grant without being at 30% design.
- Having this project get to a “shovel ready” status could help boost the local economy as it comes out of the COVID recession.
- The project funds are highly leveraged in that CSU is contributing \$375,000 to the project
- Transit Reserves which will be utilized for the local match are healthy and due to Federal CARES funding are not expected to take an impact like other City funds.

DISCUSSION / NEXT STEPS;

Mayor Troxell; CSU Foothills Campus would be another piece of this puzzle – would that be designed to the 30% as well? Talking with Rep. Deguse re: infrastructure after CARES - to be introduced in July or August – being ready for that - some of the numbers I have heard for Colorado \$17B – a portion of that would be transportation in some way – so being prepared for projects and getting them teed up – I think this looks good

Drew Brooks; CSU / Foothills Campus is part of another grant that is process – we don't know if we have been awarded that one or not

Darin Atteberry; Drew, do you have a sense for the savings as a result of the reduced services over the last month? Order of magnitude / cash wise

Noelle Currell; estimate was \$13K per week savings - we haven't seen as much use of the taxi as we had budgeted – so savings is probably higher but I would want to check that with our analyst before communicating an amount. We have been having discussion regarding when we would ramp our service back up – we don't have a timeline right now – so every week is just adding savings.

Drew Brooks; re-entry discussion - we have added 3 trips to the flex route to Boulder – we are shooting for June 1st for ramp up to full service on the flex which is our most requested route. We are watching taxi rides very closely – we are using that as a trigger. Looking to CSU as to what they will do in the fall and it looks like we will be running something close to normal if they are going to have in person classes.

Darin Atteberry; as we come out of this – what are the lessons learned with taxi options - any pullback the curtain insights from our customers that you may have learned over the last few months? Any ahas for you and your team?

Drew Brooks; when we went to a free fare model (to allow for rear door entry and minimal interaction with the driver) we did not see any increase in ridership. Covid has had a profound impact on ridership. CSU Routes – all around the country we are having discussions on what that will look like - ridership – better job of social distancing on public transportation – going to be an interesting time over next 6 months to a year. There are definitely some concerns and flags to watch out for.

Mayor Troxell; transit - slow to return with public confidence – public confidence to our ridership in a way that can accommodate the physical distancing and those sorts of things – increased cost for reduced capacity. I look at public transport as being an interesting area and one of the more difficult ones.

Ross Cunniff; I agree with Wade that both customer confidence as well as the safety of our employees – key considerations. Capital \$\$ to find a way to provide a key card next to bus driver - as well as operational dollars training / signage – only this number of people are allowed on the bus. Physical distancing – I would expect to get transit up and running at anywhere close to normal levels, -we will need to do those thing CSU will need to operationalize that as well.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Is Council Finance supportive of an out of cycle supplemental appropriation for the Multi-Modal Options Fund (MMOF) and required local match to complete 30% design for West Elizabeth Enhanced Travel Corridor?

Result: Approved

C. City Give Governance & Process – Ensuring the Public’s Trust

Nina Bodenhamer, Director City Give

EXECUTIVE SUMMARY

City Give’s transparent, non-partisan operational protocols and governance structure is intended to uphold the public’s trust as we marry charitable giving with civic priorities and the City’s strategic objectives.

City Give’s structure reflects a dedicated commitment to transparent governance and builds upon:

- Conversations with donors, residents, community partners, volunteers and business leaders.
- Peer examination, input and collaboration with organizations ranging from our own Community Foundation of Northern Colorado to consistent technical assistance from Bloomberg Philanthropies.
- Tightly intertwined policy and protocol development between philanthropic practices and financial governance.
- And, reliance on time-tested, best-practices for public charities.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Discussion: How does City Give, an operational initiative, safeguard against potential conflicts of interest between charitable giving and the City of Fort Collins?

BACKGROUND/DISCUSSION

Concerns for the influence philanthropy exerts on public institutions have been explored for decades. In response, public institutions have heavily invested in philanthropic governance models, internal fiduciary controls, conflicts of interest policy, and charitable gift management.

These historic models of philanthropy have much to offer as municipalities turn to philanthropy as a viable source of funding public service.

The City of Fort Collins has long been the beneficiary of community giving. However, historically, no uniformed pathway existed for the governance, reporting and accountability of charitable gifts. The establishment of City

Give is a pioneering first critical step to address public accountability and transparency related to charitable giving.

To ensure City policy and service delivery remain independent of intentional or unintentional donor influence, City Give has developed a range of operational checks & balances. Including:

- Philanthropic Administrative Policy
- Financial Governance Policy: enterprise-wide protocols for the acceptance, tracking and reporting of charitable gifts.
- Hands-on tools and staff training for donor stewardship, and the legal and fiduciary controls of charitable gifts; and,
- A fundraising portfolio of projects directly aligned with the City's strategic objectives and public good.

DISCUSSION / NEXT STEPS;

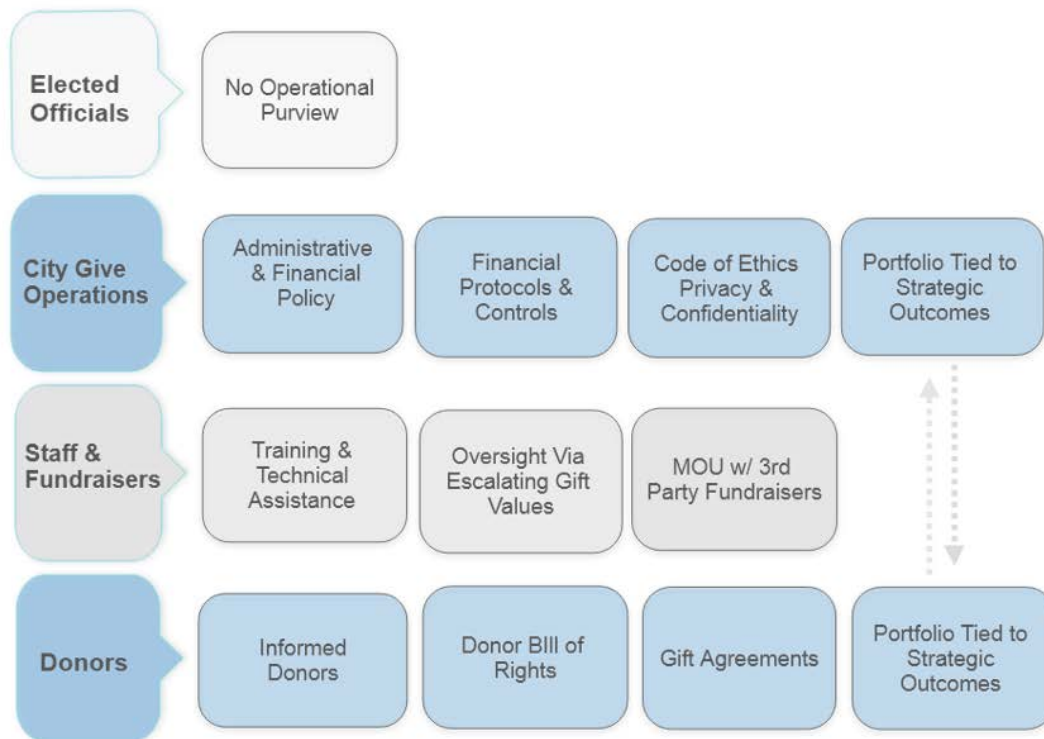
ACTION ITEM:

Ross Cunniff; Do we have anything like this presentation on the City Give website? City Give Website updates will be helpful - here is the information you need to know - something outward facing, easily available - point to the City Give website. The Philanthropic Governance slide (below) should also be included in onboarding of new Councilmembers.

Nina Bodenhamer; we have Policy / Donor Bill of Rights are out there but not the matrix. I will be happy to generate one and post it for the public. Also, our peer cities are trying to understand this space as well. Fundamental pieces - more information that ensure this transparency and public trust. The FAQs are posted which include content about transparency and this process.

Darin Atteberry; great feedback - we want to make this process as transparent as possible and also anticipates that people will have questions – adding good content to the website makes a ton of sense - this is excellent - Nina, we appreciate your work - you are well representing the city - this is a difficult balance to navigate which you are doing well. Equipping Council and having this content on the web site is important and will be helpful.

Philanthropic Governance



GIVING COMMUNITIES ARE GREAT COMMUNITIES

Mayor Troxell; Do we have a decision point showing how a donation makes its way to City Give?

Nina Bodenhamer; Everything that comes in goes through the BU associated with City Give – acceptance process and specific account string is used for designation. Every gift across all departments would be considered a designated gift. We have visibility to how a gift was spent and can report that back to the donor.

Mayor Troxell; The notion of endowment is not part of City Give?

Nina Bodenhamer; we have the capacity but not currently – it is about when is the right time - we absolutely can build an endowment - example of Natural Area gifts not being appropriated - (real estate purchase, etc.).

Mayor Troxell; I have always viewed this as a revenue diversification strategy - it is a different source that we can build. What about a grant from state or federal - how is that treated differently from private?

Nina Bodenhamer; federal and state grants have a very different reporting process – goes through our grant team; Katie and Jo - a grant from a foundation has a very different interface – we work in tandem - both the application and the receipt have support on the financial services side – depends on where it falls - state and federal, foundation, corporate or family foundation.

Ross Cunniff; thanks again - this addresses my questions and concerns - having our policies and information available and accessible is exactly what is needed.

Nina Bodenhamer; forward thinking - positive statement about how we protect the public's trust. Enough content and clarity to address questions you are hearing from constituents - would love for you to have a look at it.

Ross Cunniff; I will take a look at the website in the next couple of weeks and will let you know if I have any feedback

Ken Summers; I am teaching a class on fund raising now - not all gifts are appropriate gifts – if someone is trying to create a program for example that is not in the city purview - this isn't the avenue – will to maintain what supports our mission, purpose and goals.

Nina Bodenhamer; A municipality is a wonderful ecosystem and can say no - the value of the gift depends on how we accept it - we don't accept anonymous gifts - good common sense and it is ok to say no. I tend to look at it more as matchmaking. I can always pair a donor with a non-profit where the gift is in line with their mission.

Adjourned at 11:51 am

COUNCIL FINANCE COMMITTEE AGENDA ITEM SUMMARY

Staff: Travis Storin
Blaine Dunn

Date: June 15, 2020

SUBJECT FOR DISCUSSION: 2020-2021 Budget and Financial Review
2019 Fund Balance Review

EXECUTIVE SUMMARY

The purpose of this agenda item is to review:

- The known financial impacts of the COVID-19 pandemic
- The projected 2020-2021 financial scenarios
- Progress against the financial scenarios and remaining shortfall
- Detailed balances for year-end 2019 reserves

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

- Does the Finance Committee have any questions/input to share regarding staff's status and timeline
- Is the Committee supportive of the process to provide for Council acknowledgement of the 2020 budget cuts?
- Are there questions on the approach to 2021 reduction offers?

BACKGROUND/DISCUSSION

May Tax Collections

As discussed with Finance Committee early in the pandemic, staff anticipates that the general economic impacts of the COVID-19 pandemic to have a severe impact to City revenues. While those impacts are still difficult to quantify, May financial results represented the first full month's data point for gaining this understanding. The below table summarizes May sales and use tax (collections in May on April taxable sales):

MAY SUMMARY OVER PRIOR YEAR

	Month	Year to Date
Net Sales Tax Collected:	-23.2%	-3.7%
Net Use Tax Collected:	-27.5%	-21.0%
Net Sales and Use Tax Collected:	-23.9%	-6.5%

Year to date, sales and use tax collections excluding rebates are down 6.5% and total \$53.7M.

MAY SUMMARY OVER BUDGET

	Month	Year to Date
Net Sales Tax Collected:	-23.3%	-4.9%
Net Use Tax Collected:	-30.2%	-10.8%
Net Sales and Use Tax Collected:	-24.4%	-5.7%

Year to date, the City has collected 5.7% less sales and use tax revenue, totaling \$3.3M under budget.

Given that the stay-at-home orders and general economic halt took hold in mid-to-late March, a 23.9% contraction of sales/use tax collections in April indicates a potential low point of the initial economic shock.

Current shortfall projections

As part of the Analysis & Forecasting workstream, staff has developed a revenue forecasting model that allows for individual risk adjustment of approximately 200 different revenue streams across multiple scenarios. The below table represents the four scenarios staff has developed:

Item	Scenario A	Scenario B	Scenario C	Scenario D
2Q Economic Downturn	(15%)	(17.5%)	(20%)	(25%)
Downturn months	3	3	3	4
Recovery months	3	4	8	9
Recovery level (% of base)	97.5%	95%	92.5%	90%
Sales Tax 2020 (% change)	(9%)	(10%)	(12%)	(16%)
Use Tax 2020 (% change)	(13%)	(15%)	(19%)	(24%)
2020 Revenue Shortfall	(\$22 M)	(\$27 M)	(\$32 M)	(\$41 M)
2021 Revenue Shortfall	(\$8 M)	(\$14 M)	(\$19 M)	(\$30 M)

These figures represent an improvement over the April 22nd model's output for 2020, although the ongoing 2021 revenue shortfall remains very similar. This model also does not currently account for a resurged COVID-19 outbreak in late Q3 and into Q4.

Considering continued uncertainty, staff is maintaining that all four scenarios are possible, however scenario A is increasingly unlikely. The Q2 downturn would indicate we're more likely moving toward Scenario C or D.

Use of reserves

Industry best practices are heavily focused on prescriptive or formulaic maintenance of minimum reserve balances. However, those best practices are generally silent on advising use of those reserves. As a result, staff has established a set of judgmental operating principles. The three possible reserve options are:

- Match staff-identified budget cuts
- Backfill our one-time losses vs. the ongoing shortfall
- Backfill the 3-month deficit experienced during Q2 from reserves; balance the 2020 budget for July-December.

For each option, it's a core operating principle to draw only an amount that can be reasonably repaid within a 3-5 year window starting in 2022.

2020 Scenario Progress

In the weeks since this work has begun, staff has identified \$19M in backfill for the 2020 shortfall prior to the use of reserves. Scenario C would indicate a remaining gap of \$3M+, and Scenario D would indicate a remaining gap of \$7-\$12M depending on the amount of reserves used.

Staff is transitioning its efforts toward budget adjustments that may have a service level or program impact. The remainder of May and June will be spent on establishing a portfolio of options that over-solve for the gap by a multiple of 2.5-3x, so that multiple options/configurations can be considered in how to make up the remaining gaps.

Next steps

The trigger points for executing on budget cuts with a significant impact to services, employees, or the community are in June. In the meantime, staff is carefully putting together its contingency plan for each of the four scenarios. The Budget Lead Team is meeting for 2-hour work sessions throughout June and July. The objective is to present a balanced 2020 by June 30 and a balanced 2021 by July 31. From July forward, the process will closely resemble previous years in how the City Manager's Recommended Budget is created, and the Council-adopted budget is considered.

ATTACHMENTS

PowerPoint Presentation (Attachment 1)



COVID-19: Financial Update

June 15, 2020

- Review May sales tax collections
- Updated revenue shortfall projections
- Financial contingency plans / revenue backfill identified to-date
- Staff next steps:
 - Balanced 2020 budget developed by 6/30
 - Balanced 2021 budget offers by 7/31
- December 31, 2019 detailed reserve balances

May Financial Results

Sales / Use Tax Results

MAY SUMMARY OVER PRIOR YEAR

	Month	Year to Date
Net Sales Tax Collected:	-23.2%	-3.7%
Net Use Tax Collected:	-27.5%	-21.0%
Net Sales and Use Tax Collected:	-23.9%	-6.5%



Year to date, sales and use tax collections excluding rebates are down 6.5% and total \$53.7M.

MAY SUMMARY OVER BUDGET

	Month	Year to Date
Net Sales Tax Collected:	-23.3%	-4.9%
Net Use Tax Collected:	-30.2%	-10.8%
Net Sales and Use Tax Collected:	-24.4%	-5.7%

Year to date, the City has collected 5.7% less sales and use tax revenue, totaling \$3.3M under budget.

May governmental revenue results

	May 		Year to Date 			
	Actual 2020	Over/(Under) Budget	Budget 2020	Actual 2020	Over/(Under) Budget	Inc/(Dec) 2019
Sales & Use Tax	8,198	(2,810)	57,409	53,967	(3,442)	(3,790)
Property Taxes	5,985	(820)	19,853	20,283	430	1,269
Intergovt. Shared Revenues	961	(179)	4,449	3,721	(728)	(568)
Culture, Parks, Rec & Nat A. Fees	529	(1,058)	6,682	4,216	(2,465)	(3,417)
Payment in Lieu of Taxes	754	(79)	4,364	4,094	(270)	81
General Government Fees	4,418	(1,220)	27,488	23,466	(4,022)	(219)
Transportation Fees	207	(452)	2,284	2,216	(68)	(381)
Interest Revenue	324	17	1,437	1,980	543	321
Other Miscellaneous	670	(1,121)	10,272	9,476	(797)	(19,119)
TOTAL	22,046	(7,722)	134,238	123,418	(10,820)	(25,823)

Contingency Plan Status & Revenue Projections

April 22 - Revenue Scenario Details

Item	Scenario A	Scenario B	Scenario C	Scenario D
2Q Economic Downturn	(10%)	(15%)	(20%)	(25%)
Downturn months	3	4	5	5
Recovery months	4	4	6	9
Recovery level (% of base)	95%	95%	92.5%	90%
Sales Tax 2020 (% change)	(11%)	(15%)	(19%)	(22%)
Use Tax 2020 (% change)	(11%)	(16%)	(22%)	(25%)
2020 Revenue Shortfall	(\$25 M)	(\$34 M)	(\$46 M)	(\$53 M)
2021 Revenue Shortfall	(\$13 M)	(\$14 M)	(\$21 M)	(\$30 M)

June 10 Update - Revenue Scenario Details

Item	Scenario A	Scenario B	Scenario C	Scenario D
2Q Economic Downturn	(15%)	(17.5%)	(20%)	(25%)
Downturn months	3	3	3	4
Recovery months	3	4	8	9
Recovery level (% of base)	97.5%	95%	92.5%	90%
Sales Tax 2020 (% change)	(9%)	(10%)	(12%)	(16%)
Use Tax 2020 (% change)	(13%)	(15%)	(19%)	(24%)
2020 Revenue Shortfall	(\$22 M)	(\$27 M)	(\$32 M)	(\$41 M)
2021 Revenue Shortfall	(\$8 M)	(\$14 M)	(\$19 M)	(\$30 M)

Status of Shortfall

2020 Scenario Progress w/ Reserves

	Scenario A	Scenario B	Scenario C	Scenario D
2020 Revenue Shortfall*	\$22M	\$27M	\$32M+	\$41M
Federal and State COVID-19 Funding	\$6.5M	\$6.5M	\$6.5M	\$6.5M
Spending Reductions: Non-Personnel	\$8.7M	\$8.7M	\$8.7M	\$8.7M
Spending Reductions: Personnel	\$3.5M	\$3.5M	\$3.5M	\$3.5M
Use of Reserve Funding	\$3.3M	\$8.3M	\$10.3M+	\$10.4M ~ \$15M
Subtotal	\$22.0M	\$27M	\$29M	\$29.1M ~ \$39.3M
Remaining Gap	--	--	\$3M	\$7.3M ~ \$11.9M

Next Steps: 2020 Shortfall

June:

- Decide on 2020 budget cuts using best available information
- Guide departments to submit specific reduction offers by July 6
for BLT consideration in July

July~Beyond:

- Operationalize 2020 budget cuts
- Finalize 2021 offer purchases in advance of CMO-Recommended Budget

- Remaining gap represents 5-7% of overall City cost structure
- Executive leadership has been tasked with identifying cost initiatives amounting to 15% savings within their specific Service Areas
- City does not intend for across-the-board cuts – this is a suite of options/levers to achieve different levels of cuts depending on revenue realization
- Allows for ELT and Council configuration/optionality. ELT evaluation began on 6/18

Working toward...

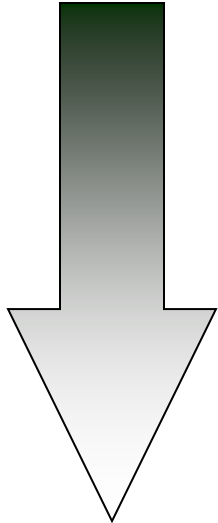
- Aligning with the triple bottom line
- Incorporating our equity lens
- Community engagement, particularly within underserved communities

- Discussion:
 - Does the Finance Committee have any questions/input to share regarding staff's status and timeline
 - Is the Committee supportive of the process to provide for Council acknowledgement of the 2020 budget cuts?
 - Are there questions on the approach to 2021 reduction offers?

2019 Fund Balances Report-out

- Types of constraints
- Availability of restricted balances
- Review fund balances
- Using fund balances in the budget process

Most
Constrained



Least
Constrained

Non-spendable

- Non-liquid in form (e.g. inventory, long-term receivables, land)
- Legally or contractually required to be maintained intact (e.g. permanent endowments)

Restricted

- Externally enforceable legal restrictions (e.g. TABOR emergency reserve, debt covenants, re-development agreements, IGA's)

Committed

- Constraint formally imposed at the highest level of decision making authority through Ordinance (e.g. Capital Expansion fees, Neighborhood Parkland fees)

Assigned

- Intended to be used for specific purposes (e.g. Affordable Housing, Camera Radar, Encumbrances)

Unassigned

- Available for any City purpose
- Reported only in the General Fund except in cases of negative fund balance

Available but with some constraints

- Keep Fort Collins Great (KFCG) categories are restricted but available as defined in the ballot language
- Udall Endowment interest is restricted but available to be appropriated for maintenance and improvements of Udall Natural Area

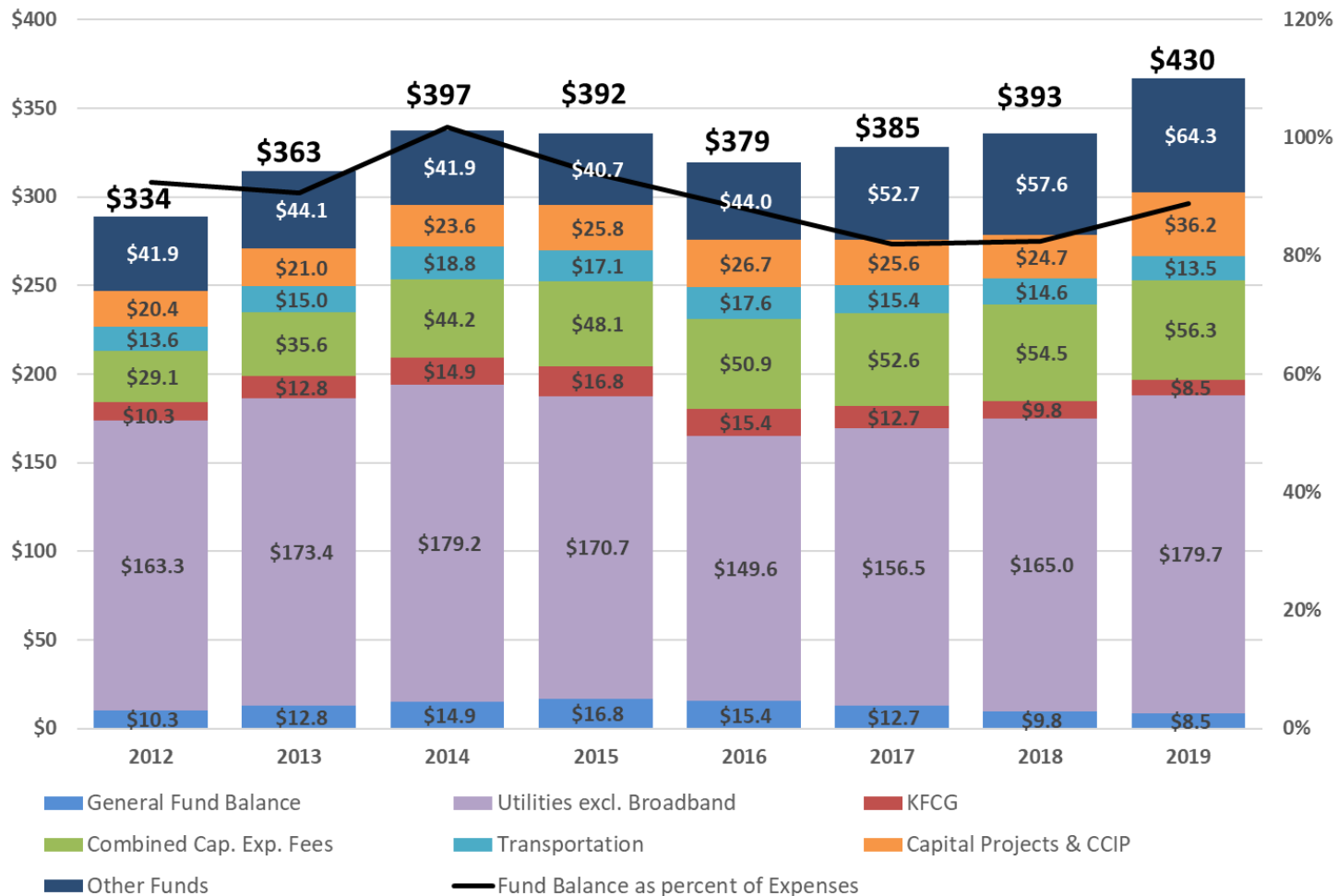
Available for nearly any purpose

- Funds available at the discretion of the City Council for any *municipal purpose*

All Governmental Funds

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
General Fund non-emergency	\$ 33.3	\$ 38.1	\$ 24.9	\$ 2.6	\$ 10.6
General Fund emergency	33.0	33.7	33.7	-	-
Capital Expansion Fund	19.5	22.9	1.5	21.4	-
Sales & Use Tax Fund	0.8	0.8	0.8	-	-
GID #1 Fund	0.7	0.9	-	0.9	-
Keep Fort Collins Great Fund	9.8	8.5	5.5	3.0	-
Community Capital Imprvmt Plan	12.7	11.5	7.8	3.7	-
Neighborhood Parkland Fund	10.1	9.2	5.4	3.8	-
Conservation Trust Fund	2.3	2.8	0.9	1.9	-
Natural Areas Fund	18.6	19.5	9.2	10.3	-
Cultural Services Fund	2.2	2.3	0.5	0.9	0.9
Recreation Fund	2.5	2.6	0.7	1.9	-
Cemeteries Fund	0.8	0.5	0.5	-	-
Perpetual Care Fund	2.0	2.0	-	2.0	-
Museum Fund	0.7	0.7	0.1	0.6	-
Transit	3.4	3.4	3.4	-	-
Transportation Capital Expansion	24.9	24.2	9.4	14.8	-
Transportation	14.6	13.5	4.2	6.6	2.7
Parking Fund	1.5	1.5	0.3	1.2	-
Capital Projects Fund	12.0	24.7	16.0	5.6	3.1
Equipment Fund	3.6	3.1	1.6	1.5	-
Self Insurance Fund	2.7	1.7	2.2	(0.5)	-
Data & Communications Fund	3.4	3.1	0.7	0.8	1.6
Benefits Fund	11.7	18.5	10.4	8.1	-
TOTAL	\$ 227.5	\$ 250.6	\$ 140.2	\$ 91.5	\$ 18.9
Total available for COVID-draws		\$ 73.9	\$ 33.7	\$ 21.3	\$ 18.9

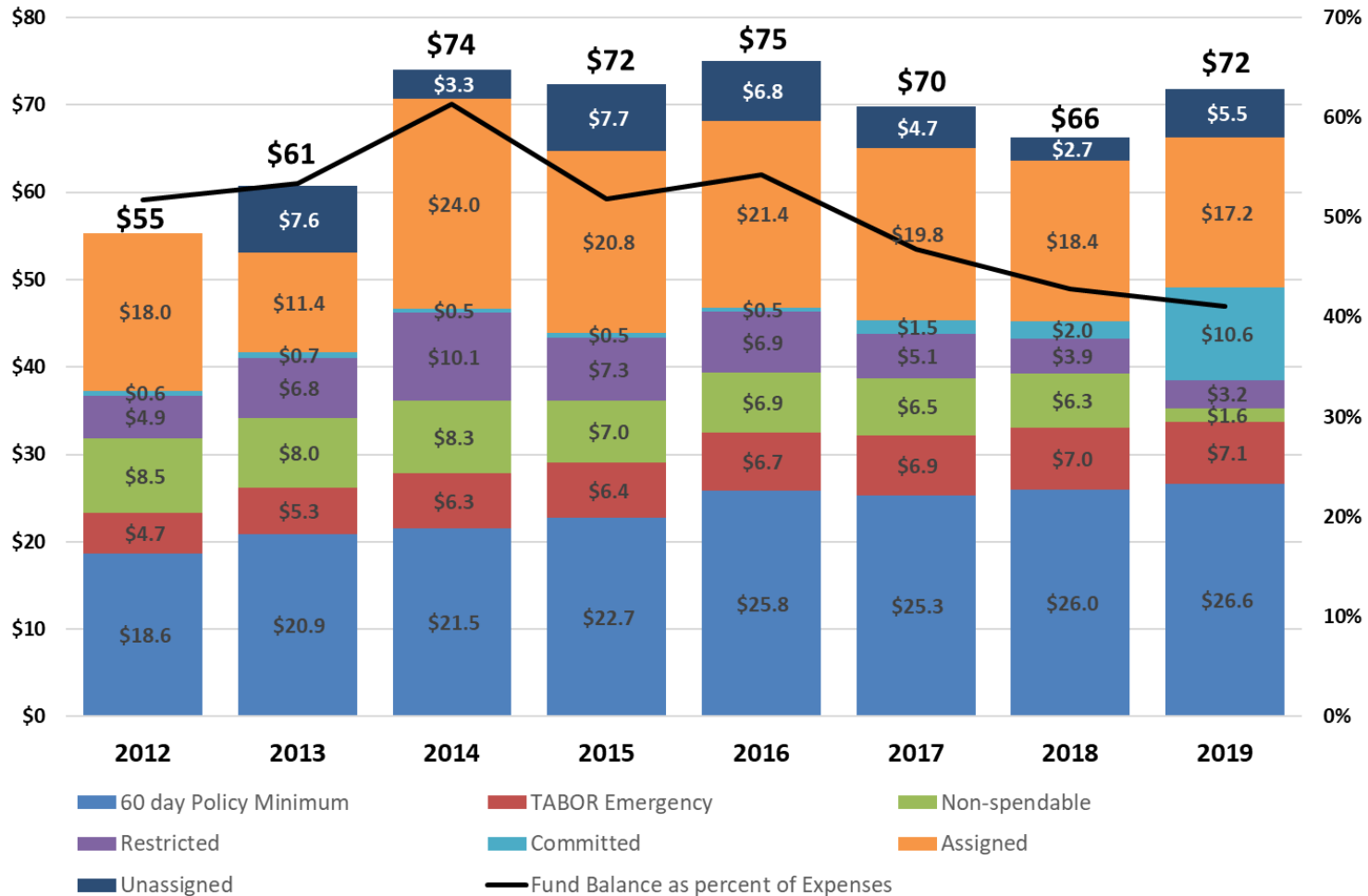
Fund Balance / Reserves by Year



General Fund - Year End 2019 - \$71.8

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Assigned - Minimum 60 day Policy	\$ 26.0	\$ 26.6	\$ 26.6	\$ -	\$ -
Non-spendable					
Advances	4.7	-	-	-	-
Landbank inventory	1.5	1.5	1.5	-	-
Udall Endowment	0.1	0.1	0.1		
Restricted					
TABOR Emergency	7.0	7.1	7.1	-	-
Police Programs	0.3	0.3	-	0.3	-
Donations & Misc	1.2	0.8	0.1	0.7	-
Economic Rebates	1.7	1.4	0.1	1.3	-
DDA/Woodward Debt	0.7	0.7	-	-	0.7
Committed					
Traffic Calming	0.2	0.2	-	0.2	-
Culture & Recreation	0.4	0.5	0.4	0.1	-
Affordable Housing Land Bank	1.4	1.3	1.3	-	-
Police Regional Training Facility	-	8.6	8.6	-	-
Assigned					
Prior Year Purchase Orders	3.7	4.3	4.3	-	-
Manufacturing Use Tax Rebate	1.2	0.5	0.5	-	-
Transit Bus Replacement	0.5	-	-	-	-
Golf Irrigation System	0.5	0.4	-	-	0.4
Revenue Contingency	2.2	2.2	-	-	2.2
Camera Radar	1.1	1.3	-	-	1.3
Waste Innovation	0.2	0.2	-	-	0.2
Cultural Services	-	0.3	-	-	0.3
Reappropriation	0.3	0.2	0.2	-	-
Budgeted use of reserves	8.7	7.8	7.8	-	-
Unassigned	2.7	5.5	-	-	5.5
Year End Total	\$ 66.3	\$ 71.8	\$ 58.6	\$ 2.6	\$ 10.6

General Fund / Reserves by Year



General Fund Balances

- \$1.3M Land-bank program inventory, held at lower of cost or market
- \$7.1M is an emergency reserve required by TABOR, equal to 3% of qualified governmental revenue; City also has policy setting an additional \$26.6M aside
- \$1.4M is restricted to Economic Incentive Rebates
- Traditionally fund balances are assigned for camera radar and photo red-light, public safety dispatch system, affordable housing and waste innovation
- \$8.6M is committed for the Police Regional Training Facility
- \$12.3M is set aside for prior year purchase orders, reappropriation, and budgeted use of reserves

Keep Fort Collins Great Fund - Year End 2019 - \$8.5

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Restricted					
Street Maintenance	3.9	3.5	2.6	0.9	-
Other Transportation	0.4	0.4	0.3	0.1	-
Police Services	2.9	1.9	1.2	0.7	-
Fire & Emergency Services	0.1	0.2	-	0.2	-
Parks & Recreation	1.3	1.1	0.7	0.4	-
Other	1.2	1.4	0.7	0.7	-
Year End Total	\$ 9.8	\$ 8.5	\$ 5.5	\$ 3.0	\$ -

Natural Areas Fund - Year End 2019 - \$19.5

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
Natural Areas	16.7	18.8	8.8	10.0	-
Assigned					
Prior Year Purchase Orders	0.8	0.4	0.4	-	-
Capital Projects	1.1	0.3	-	0.3	-
Year End Total	\$ 18.6	\$ 19.5	\$ 9.2	\$ 10.3	\$ -

Cultural Services & Facilities Fund - Year End 2019 - \$2.4

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Restricted					
Opera Donation	0.1	0.1	-	0.1	-
Committed					
Art in Public Places	0.6	0.9	0.1	0.8	-
Assigned					
Prior Year Purchase Orders	0.3	-	-	-	-
Cultural Services Surplus	1.2	1.3	0.4	-	0.9
Year End Total	\$ 2.2	\$ 2.3	\$ 0.5	\$ 0.9	\$ 0.9

Recreation Fund - Year End 2019 - \$2.6

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Assigned					
Prior Year Purchase Orders	0.1	0.1	0.1	-	-
Recreation Programs	0.3	0.3	-	0.3	-
Recreation Surplus	2.1	2.2	0.6	1.6	-
Year End Total	\$ 2.5	\$ 2.6	\$ 0.7	\$ 1.9	\$ -

Transportation Fund - Year End 2019 - \$13.5

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Assigned					
Prior Year Purchase Orders	0.5	1.3	1.3	-	-
Capital Projects	1.6	1.4	-	1.4	-
Harmony Road	5.7	5.5	0.3	5.2	-
Transportation Surplus	6.8	5.3	2.6	-	2.7
Year End Total	\$ 14.6	\$ 13.5	\$ 4.2	\$ 6.6	\$ 2.7

Capital Project Fund - Year End 2019 - \$24.7

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Restricted					
Building on Basics (BOB)	5.2	4.2	1.3	2.9	-
Building on Basics Investment Earning	-	2.2	-	2.2	-
CCIP	-	-	-	-	
Donations and Grants	0.5	-	-	-	
Committed					
General Fund Supported Projects	5.0	14.7	14.7	-	-
Misc. projects					
Other Investment Earnings	-	3.1	-	-	3.1
BCC Residual	-	0.5	-	0.5	
Year End Total	\$ 11.2	\$ 24.7	\$ 16.0	\$ 5.6	\$ 3.1

Self Insurance Fund - Year End 2019 - \$1.7

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Minimum Policy - 25% Operations	\$ 1.1	\$ 1.7	\$ 1.7	\$ -	\$ -
Non-spendable				-	
Prepays	-	0.5	0.5	-	
Committed					
Self Insurance surplus / (deficit)	1.5	(0.5)	-	(0.5)	-
Assigned					
Prior Year Purchase Orders	0.1	-	-	-	-
Year End Total	<u>\$ 2.7</u>	<u>\$ 1.7</u>	<u>\$ 2.2</u>	<u>\$ (0.5)</u>	<u>\$ -</u>

Data and Communications Fund - Year End 2019 - \$3.1

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Assigned					
Prior Year Purchase Orders	0.4	-	-	-	-
Reappropriation	0.1	0.2	0.2	-	-
Budgeted Use of Reserves	1.3	0.5	0.5	-	-
Data & Communication Surplus	1.6	2.4	-	0.8	1.6
Year End Total	\$ 3.4	\$ 3.1	\$ 0.7	\$ 0.8	\$ 1.6

Benefits Fund - Year End 2019 - \$15.3

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Policy minimum - 30% Operations Assigned	\$ 6.8	\$ 6.6	\$ 6.6	\$ -	\$ -
Budgeted Use of Reserves	0.6	3.8	3.8	-	-
Benefit Surplus	4.3	8.1	-	8.1	-
Year End Total	\$ 11.7	\$ 18.5	\$ 10.4	\$ 8.1	\$ -

Backup slides

May governmental expense results by SA

	May		Year to Date					% Annual Budget Spent & Encumbered
	<div>(Over)/Under</div>		<div>(Over)/Under</div>					
	Actual 2020	Budget	Budget 2020	Actual 2020	Budget	(Inc)/Dec 2019	Actual + PO's 2020	
Police Services	3,274	(556)	17,815	18,066	(250)	(369)	19,126	40%
Financial Services	2,332	(918)	4,062	4,664	(602)	(403)	5,024	54%
Community Services	2,514	1,280	22,033	18,574	3,459	(680)	20,409	33%
Planning, Dev & Transportation	5,229	(726)	22,336	20,766	1,571	(2,455)	32,233	48%
Executive Services	257	(138)	1,395	1,501	(107)	248	1,552	41%
Judicial Services	74	23	518	532	(14)	(41)	541	41%
Legal Services	219	0	1,109	1,059	51	(45)	1,072	38%
Information & Employee Svcs	6,530	1,382	33,136	31,248	1,888	(5,597)	41,976	49%
Sustainability Services	2,717	(724)	6,120	4,851	1,269	(352)	6,348	40%
Other	654	1,976	3,593	1,585	2,009	(377)	1,587	23%
Poudre Fire Authority	2,570	0	12,851	12,851	0	(481)	12,851	42%
TOTAL	26,369	1,599	124,970	115,696	9,274	(10,550)	142,720	43%

May governmental expense results by type

	<div>May</div>		<div>Year to Date</div>					% Annual Budget Spent & Encumbered
	<div>(Over)/Under</div>		Budget 2020	Actual	<div>(Over)/Under</div>	(Inc)/Dec	Actual +	
	Actual 2020	Budget		2020	Budget	2019	PO's 2020	
Personnel Costs	9,213	717	47,876	47,106	769	(1,299)	47,106	37%
Purchased Prof & Tech Services	3,431	67	20,244	18,975	1,269	492	24,614	49%
Purchased Property Services	4,266	(81)	15,731	13,435	2,295	(1,442)	23,830	53%
Other Purchased Services	4,759	(1,046)	17,114	18,116	(1,003)	(2,573)	23,478	50%
Supplies	947	487	7,128	6,482	646	(1,504)	9,668	47%
Capital Outlay	1,790	(995)	9,119	7,092	2,027	(3,152)	8,371	34%
Other	1,510	(165)	3,680	2,320	1,361	(818)	3,482	47%
Debt & Other Uses	453	2,615	4,079	2,170	1,909	(253)	2,170	22%
TOTAL	26,369	1,599	124,970	115,696	9,274	(10,550)	142,720	43%

Tier 1 Non-personnel Submissions

Tier 1 Reductions	2020 Non-Personnel Budget	% of overall non-Personnel Budget	Cuts in Governmental Funds	Cuts in Non-Governmental Funds	Total Cuts	% of SA Budget Cut
Police Services	8,839,211	7.4%	509,854	-	509,854	5.8%
Financial Services	1,063,415	0.9%	23,701	70,405	94,106	8.8%
Community Services	29,641,929	24.9%	337,631	5,113	342,744	1.2%
Planning, Development, & Transportation	53,578,002	44.9%	15,404,383	283,410	15,687,793	29.3%
Executive Services	1,003,206	0.8%	211,454	-	211,454	21.1%
Judicial Services	337,972	0.3%	9,913	-	9,913	2.9%
Legal Services	287,041	0.2%	19,924	-	19,924	6.9%
Information/Employee Services	15,431,579	12.9%	194,770	174,368	369,138	2.4%
Sustainability Services	2,548,335	2.1%	175,804	1,800	177,604	7.0%
Other	6,498,466	5.5%	-	-	-	0.0%
Total Governmental	119,229,155	100.0%	16,887,434	535,096	17,422,530	14.6%
Utility Services, excl. Purch Power	70,582,878	100%	0	1,068,167	1,068,167	1.5%

Tier 1 Non-personnel Submissions

- \$5.3M adjustment to Street Maintenance Program budget
- \$9.5M capital project deferrals:
 - \$3.3M Linden St.
 - \$3.0M Lemay/Vine
 - \$1.3M other TCEF funding (Sharp Point, Harmony/Strauss Cabin, Power Trail Grade Sep)
- \$1.4M Discretionary: Travel/training/consulting
- \$460K Supplies

Citywide initiatives (in flight)

- Suspend City picnic and employee recognition week
- Suspend use of DBA giftcards
- All non-essential, non-accreditation-based travel and training
- All non-travel food, including Boards and Commissions (Council??)
- Overtime only for police and public works emergencies – all other OT subject to SA Director advance approval with preference to offset
- Any price increase on a contract renewal subject to Purchasing Director and CFO review

Back-up Fund Balance Slides

Capital Expansion Fund - Year End 2019 - \$22.9

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Committed					
General Government	12.0	13.0	-	13.0	-
Police	0.8	0.7	-	0.7	-
Fire	1.4	1.9	-	1.9	-
Community Parkland	5.3	7.3	1.5	5.8	-
Year End Total	\$ 19.5	\$ 22.9	\$ 1.5	\$ 21.4	\$ -

Sales & Use Tax Fund - Year End 2019 - \$.8

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
Natural Areas	0.8	0.8	0.8	-	-
Year End Total	\$ 0.8	\$ 0.8	\$ 0.8	\$ -	\$ -

General Improvement District #1 Fund - Year End 2019 - \$0.9

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Committed					
Capital Improvements	0.7	0.9	-	0.9	-
Year End Total	<u>\$ 0.7</u>	<u>\$ 0.9</u>	<u>\$ -</u>	<u>\$ 0.9</u>	<u>\$ -</u>

Community Capital Improvement Plan - Year End 2019 - \$11.5

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
Available for ballot projects	2.7	3.7	-	3.7	-
City Park Train	0.2	0.1	0.1	-	-
Club Tico Renovation	0.0	0.0	0.0	-	-
Poudre River Proj (CCIP only)	4.0	-	-	-	-
Gardens Visitor Center Expansion	1.8	0.2	0.2	-	-
Nature in the City	0.3	0.2	0.2	-	-
Affordable Housing Fund	0.5	0.8	0.8	-	-
Arterial Intersection Imprvmnt	0.2	0.6	0.6	-	-
Bicycle Infrastructure Imprvmt	0.2	0.3	0.3	-	-
Bike/Ped Grade Separated Cross	1.2	3.1	3.1	-	-
Bus Stop Improvements	0.1	-	-	-	-
Lincoln Avenue Bridge	0.3	0.3	0.3	-	-
Pedestrian Sidewalk - ADA	0.1	0.1	0.1	-	-
Transfort Bus Replacements	0.5	0.5	0.5	-	-
Willow Street Improvements	0.6	1.1	1.1	-	-
Linden Street Renovation	-	0.5	0.5		
Year End Total	\$ 12.7	\$ 11.5	\$ 7.8	\$ 3.7	\$ -

Neighborhood Parkland Fund - Year End 2019 - \$9.2

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Committed					
Neighborhood Parks	10.1	9.2	5.4	3.8	-
Year End Total	\$ 10.2	\$ 9.2	\$ 5.4	\$ 3.8	\$ -

Conservation Trust Fund - Year End 2019 - \$2.8

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
Parks, Rec & Open Space Capital Imp	2.3	2.8	0.9	1.9	-
Year End Total	\$ 2.3	\$ 2.8	\$ 0.9	\$ 1.9	\$ -

Cemeteries Fund - Year End 2019 - \$0.5

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Assigned					
Cemeteries Surplus	0.8	0.5	0.5	-	-
Year End Total	\$ 0.8	\$ 0.5	\$ 0.5	\$ -	\$ -

Perpetual Care Fund - Year End 2019 - \$2.0

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
Perpetual Care	2.0	2.0	-	2.0	-
Year End Total	\$ 2.0	\$ 2.0	\$ -	\$ 2.0	\$ -

Museum Fund - Year End 2019 - \$0.7

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Assigned					
Cultural Services Surplus	0.7	0.7	0.1	0.6	-
Year End Total	\$ 0.7	\$ 0.7	\$ 0.1	\$ 0.6	\$ -

Transit Fund - Year End 2019 - \$6.3

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Assigned					
Transit Surplus(Deficit)	<u>3.4</u>	<u>3.4</u>	<u>3.4</u>	<u>-</u>	<u>-</u>
Year End Total	<u>\$ 3.4</u>	<u>\$ 3.4</u>	<u>\$ 3.4</u>	<u>\$ -</u>	<u>\$ -</u>

Transportation CEF Fund - Year End 2019 - \$24.2

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
Street Oversizing Surplus	15.6	14.8	-	14.8	-
Assigned					
Capital Projects	3.6	7.4	7.4	-	-
Prior Year Purchase Orders	-	0.1	0.1	-	-
Budgeted use of reserves	5.7	1.9	1.9	-	-
Year End Total	\$ 24.9	\$ 24.2	\$ 9.4	\$ 14.8	\$ -

Parking Fund - Year End 2019 - \$1.5

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Restricted					
CC Parking Garage IGA	1.0	1.2	-	1.2	-
Assigned					
Prior Year Purchase Orders	0.1	0.1	0.1	-	-
Capital Projects	-	-	-	-	-
DT Parking	0.4	0.2	0.2	-	-
Year End Total	<u>\$ 1.5</u>	<u>\$ 1.5</u>	<u>\$ 0.3</u>	<u>\$ 1.2</u>	<u>\$ -</u>

Golf Fund - Year End 2019 - \$0.9

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Minimum Policy - 12.5% Operations Assigned	\$ 0.3	\$ 0.4	\$ 0.4	\$ -	\$ -
Available for Capital and Operations	0.4	0.5	0.1	0.4	-
Year End Total	\$ 0.7	\$ 0.9	\$ 0.5	\$ 0.4	\$ -

Equipment Fund - Year End 2019 - \$3.1

	<u>2018</u>	<u>2019</u>	<u>Appropriated, Min. Policy, or Scheduled</u>	<u>Available but with some Constraints</u>	<u>Available for Nearly Any Purpose</u>
Minimum Policy - 8.3% Operations Assigned	\$ 0.8	\$ 0.7	\$ 0.7	\$ -	\$ -
Prior Year Purchase Orders	0.1	-	-	-	-
Reappropriation	0.9	0.9	0.9	-	-
Equipment surplus	1.8	1.5	-	1.5	-
Year End Total	<u>\$ 3.6</u>	<u>\$ 3.1</u>	<u>\$ 1.6</u>	<u>\$ 1.5</u>	<u>\$ -</u>

Light & Power Fund (excl. Broadband) - Year End 2019 - \$36.0

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Minimum Policy - 25% Operations Assigned	\$ 8.3	\$ 8.5	\$ 8.5	\$ -	\$ -
Prior Year Purchase Orders	1.9	1.3	1.3	-	-
Approved Capital Projects	11.9	10.1	10.1	-	-
Budgeted Use of Reserves	0.3	5.6	5.6	-	-
Available for Capital and Operations	8.4	10.5	-	10.5	-
Year End Total	\$ 30.8	\$ 36.0	\$ 25.5	\$ 10.5	\$ -

Water Fund - Year End 2019 - \$75.9

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Minimum Policy - 25% Operations Assigned	\$ 4.6	\$ 5.5	\$ 5.5	\$ -	\$ -
Prior Year Purchase Orders	0.3	0.5	0.5	-	-
Approved Capital Projects	34.8	35.2	35.2	-	-
Budgeted Use of Reserves	-	-	-	-	-
Available for Capital and Operations	30.5	34.7	-	34.7	-
Year End Total	\$ 70.2	\$ 75.9	\$ 41.2	\$ 34.7	\$ -

Wastewater Fund - Year End 2019 - \$45.3

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Minimum Policy - 25% Operations Assigned	\$ 3.6	\$ 3.7	\$ 3.7	\$ -	\$ -
Prior Year Purchase Orders	0.3	0.4	0.4	-	-
Approved Capital Projects	15.6	18.9	18.9	-	-
Budgeted Use of Reserves	1.1	-	-	-	-
Available for Capital and Operations	22.2	22.3	-	22.3	-
Year End Total	\$ 42.8	\$ 45.3	\$ 23.0	\$ 22.3	\$ -

Storm Drainage Fund - Year End 2019 - \$21.6

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Minimum Policy - 25% Operations Assigned	\$ 1.9	\$ 1.8	\$ 1.8	\$ -	\$ -
Prior Year Purchase Orders	0.1	0.1	0.1	-	-
Approved Capital Projects	9.2	7.0	7.0	-	-
Budgeted Use of Reserves	-	-	-	-	-
Available for Capital and Operations	8.3	12.7	-	12.7	-
Year End Total	\$ 19.5	\$ 21.6	\$ 8.9	\$ 12.7	\$ -

Utility Customer Service Fund - Year End 2019 - \$0.9

	2018	2019	Appropriated, Min. Policy, or Scheduled	Available but with some Constraints	Available for Nearly Any Purpose
Policy minimum	\$ -	\$ -	\$ -	\$ -	\$ -
Assigned					
Prior Year Purchase Orders	0.3	0.3	0.3	-	-
Budgeted Use of Reserves	0.5	0.2	0.2	-	-
Unrestricted	0.9	0.4	-	0.4	-
Year End Total	\$ 1.7	\$ 0.9	\$ 0.5	\$ 0.4	\$ -

COUNCIL FINANCE COMMITTEE AGENDA ITEM SUMMARY

Staff: Jennifer Poznanovic, Sr. Project & Revenue Manager

Date: June 15, 2020

SUBJECT FOR DISCUSSION

Impacts of the U.S. Supreme Court's *Wayfair* Decision and City Collection of Sales Tax from Remote Sellers

EXECUTIVE SUMMARY

The purpose of this item is to provide an update on impacts from the U.S. Supreme Court's *South Dakota v. Wayfair, Inc.* decision (June 2018) since the last update to Council Finance Committee in November 2018. In that case, the Supreme Court overruled its prior holdings that a state may only tax a retailer if that retailer has a physical presence in the state. The *Wayfair* court held that a state can require an out-of-state retailer to collect tax so long as that retailer has a "substantial nexus" connecting it to the state. The Supreme Court approved the system administered by South Dakota, which set thresholds above which a retailer had to collect tax, provided a statewide single point of remittance, and applied only prospectively after its adoption.

The Colorado Municipal League (CML) Sales Tax Simplification Committee met in October 2018 and all self-collected home rule cities agreed to move forward with voluntary compliance to keep the sales tax system as simple as possible, in an effort to align with the system the Supreme Court approved in *Wayfair*. Per CML, if all 72 self-collecting home rule cities were to implement their own collection from out-of-state retailers, it would likely cause a challenge under the *Wayfair* case because the varied tax requirements would arguably result in an undue burden to those retailers in violation of the U.S. Constitution.

State House Bill 19-1240 established at the State level the parameters for what constitutes sufficient "economic nexus" to require retailers without a physical presence in the State to collect and remit sales tax. The bill also established requirements from when marketplace facilitators (like Amazon or Walmart) are required to collect and remit sales tax on behalf of third-party sellers. These requirements do not extend to home rule municipalities. The State's single point of remittance software is an option for taxing jurisdictions to collectively provide retailers a system similar to the one South Dakota had, which the U.S. Supreme Court looked upon favorably in the *Wayfair* case. Collective participation in such a system may reduce the risk of a constitutional challenge. If self-collected home rule municipalities move away from accepting voluntary compliance from retailers and towards mandating that remote sellers collect tax, the planned approach is to require such collection only from remote sellers that have economic nexus in the municipalities. CML and the Sales Tax Simplification Committee has crafted a model ordinance, which has language defining economic nexus and marketplace facilitators, and creating a legal structure governing the collection and remittance of tax from remote sellers.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council Finance Committee support legal review of the State's single point of remittance software and model ordinance as the next step?

BACKGROUND/DISCUSSION

***Wayfair* Decision, June 2018**

In the *Wayfair* case, the U.S. Supreme Court held that South Dakota could impose a sales tax filing obligation on any remote seller who had a substantial nexus with the state, and that a physical presence was no longer necessary. Prior to the *Wayfair* case, the Supreme Court had held that a taxing jurisdiction could not require a retailer to collect sales tax unless the retailer had a physical presence in the jurisdiction. The Supreme Court upheld South Dakota's determination that a retailer without a physical presence has a substantial enough nexus to require sales tax collection when the retailer has annual sales of at least \$100,000, or has 200 separate sales transactions of any amount. The Supreme Court looked favorably on South Dakota's law for several reasons. South Dakota's law created a threshold for sales, which protected smaller sellers. South Dakota is also a member of the Streamlined Sales & Use Tax Agreement, providing online retailers some simplification in complying with the requirement. Also, the law was not applied retroactively, but instead only for future transactions after the passage of the requirement.

Colorado Department of Revenue (DOR) Implementation of *Wayfair*

In July 2019, State House Bill 19-1240 established economic nexus for purposes of retail sales made by retailers without physical presence. The bill also codified destination sourcing, and as of October, requires marketplace facilitators to collect and remit sales tax on behalf of marketplace sellers. A marketplace facilitator is an individual or legal entity that operates a marketplace (i.e. Amazon, Etsy). A marketplace seller is someone who sells good through a marketplace facilitator.

The State collects state and local sales tax from out-of-state retailers for any taxing entities for which it already collects in-state sales tax. The DOR collects for approximately 265 jurisdictions, 150 statutory cities, 24 home rule municipalities and all but two counties.

Self-Collecting Home Rule Municipalities and *Wayfair*

Fort Collins is one of 72 self-collecting home rule municipalities. Under the Colorado Constitution, home rule municipalities have autonomy over their sales tax with their own separate registration, licensing, forms, auditors and tax base. In other words, home rule municipalities are like separate taxing jurisdictions within the State of Colorado.

The CML Sales Tax Simplification Committee met in October 2018 and all staff representatives from self-collected home rule cities agreed to move forward with voluntary compliance. South Dakota had three key characteristics that the Supreme Court looked upon favorably in upholding South Dakota's taxing requirement: (1) a threshold limit; (2) a ban on applying the requirements retroactively; and (3) a single tax administration system. It is CML's position that, if all 72 self-collecting home rule municipalities were to implement their own mandatory collection from out-of-state retailers, it would increase the risk of a retailer challenging such collection as being contrary to the *Wayfair* case, and therefore, unconstitutional.

DOR's Single Point of Remittance Software (SUTS System) & Single GIS System

The DOR's single point of remittance software, including the SUTS System and GIS System, is an option for the numerous self-collecting jurisdictions to align with what South Dakota did in an effort to reduce the risk of a constitutional challenge. Remote sellers with sufficient economic nexus can file and pay via the SUTS System. The SUTS System would be available for any business, not just those whose only contact with the City is economic nexus. Businesses with physical presence could file and remit taxes using the SUTS System. Businesses with physical presence in the City would still need to have a Fort Collins sales tax license. The SUTS System vendor will charge a \$17,500 fee to integrate the SUTS System with the City's current software, but the SUTS System can also be used manually without a fee. The portal is essentially an additional filing option for businesses, meaning businesses could file on paper, using the City's online system, or via the DOR's SUTS System.

CML's Model Ordinance

CML has consulted with municipal attorneys and finance staff regarding the drafting of a model ordinance to establish a uniform system across the numerous municipalities. The ordinance establishes a definition for economic nexus, which would identify who is taxed and who is compelled to collect the tax. This definition of the economic nexus relates to the City's definition of engaged in business. The ordinance also defines what a marketplace facilitator is, and would also identify who collects the tax. This definition relates to the City's definition of a retailer. CML is suggesting that municipalities adopt the model ordinance if municipalities decide to move away from relying on retailers' voluntary compliance and instead mandate collection by remote sellers that only have economic nexus. CML recommends this is for municipalities that are going to use the DOR single point of remittance software, with the intent of creating uniformity in the State.

What Are Other Cities Doing?

- Boulder – too soon and too much risk
- Aurora – ordinance at Council, ready to move ahead
- Golden – plans to participate, SUTS System first as admin decision, model ordinance this summer
- Thornton – plans to participate, SUTS System first and model ordinance later
- Centennial – plans to participate, no use tax, may have issues with economic nexus

According to DOR and CML, most home rule cities need to participate to keep the sales tax system as simple as possible to most closely align with the South Dakota system approved in *Wayfair*. DOR representatives have stated to City staff that it is critical for larger home rule municipalities, like Fort Collins, to join.

The Case for Self-Collected Home Rule Municipalities - Why Fort Collins is Not State-Collected

A major benefit for self-collected home rule municipalities is the authority to "locally collect" sales tax and maintain control of their sales tax base. For example, the State has 87 sales and use tax exemptions. Self-collected home rule municipalities typically have broader sales tax bases than the State. Another advantage is more targeted collection and enforcement. Local programs can more thoroughly educate businesses and follow up with auditing where appropriate. The SUTS System and model ordinance are compatible with maintaining home rule self-collecting status.

Top Internet Retailers Licensed in Fort Collins

Nationally, e-commerce represents 11.8%* of total retail sales. Of the top 10 U.S. companies based on percentage of e-commerce sales, five are licensed in Fort Collins (see chart below).

Retailer**	Ecommerce Share	Licensed
Amazon	49.1%	Yes
eBay	6.6%	No
Apple	3.9%	No
Walmart	3.7%	Yes
The Home Depot	1.5%	Yes
Best Buy	1.3%	Yes
QVC Group	1.2%	No
Macy's	1.2%	Yes
Costco	1.2%	No
Wayfair	1.1%	No

*U.S. Census Quarterly Retail E-Commerce Sales 1st Quarter 2020

**Top 10 US companies based on % of e-commerce sales, eMarketer, July 2018

Dollars at Stake

The State estimates \$72 million in sales tax revenue in 2020 from retailers having economic nexus and marketplace facilitators*. \$72 million is equivalent to 2.1% of estimated State collections in 2020. In Fort Collins, 2.1% is equivalent to \$2.5 million. It is important to note that some retailers are already remitting voluntarily in Fort Collins.

Regarding marketplace facilitators, some have turned off collection of local taxes on behalf of sellers, leaving them no way to collect the tax. Also, Amazon has indicated that more than half of the items sold on Amazon are through their third-party marketplace**.

*Colorado Legislative Council Staff – Economic & Revenue Forecast December 2019, p.28

**Amazon 2017 Annual Report, Letter to Shareholders

Options

1. Continue voluntary compliance (current state)
2. Pursue SUTS System and model ordinance (staff recommendation)
 - City stays self-collected
 - Voluntary compliance becomes mandatory
 - Additional filing option for businesses

ATTACHMENTS

1. Wayfair Update CFC 2020-06-15



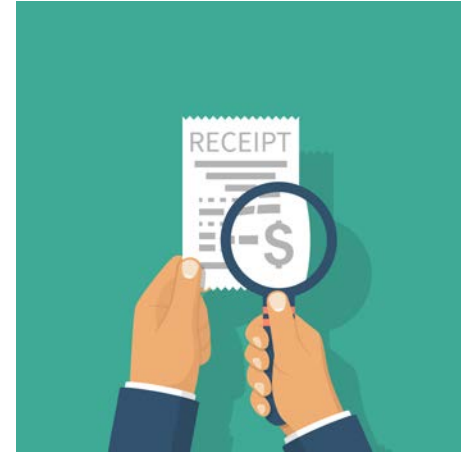
- *Wayfair* Background
- Current Status
- Options
- Council Finance Committee Direction



The Supreme Court held that an out-of-state retailer does not need a physical presence in a state before the state can require the retailer to collect and remit sales tax. However, a substantial nexus is needed.

The Supreme Court held that South Dakota's tax law properly identified when a retailer had a substantial nexus with the state for tax purposes:

- Annual **minimum sales of \$100,000**; or
- A minimum of **200 separate sales transactions** of any amount





**Remote sellers above
the de minimis level
(same as South Dakota)**



**The State of Colorado
collects state sales tax
and local sales tax for
entities it collects for**



**Responsible for approx.
265 jurisdictions**

150 statutory cities

All but two counties

24 home rule (state collected)

State House Bill 19-1240 (July 2019)

- Establishes economic nexus for purposes of retail sales made by retailers without physical presence
- Codifies destination sourcing
 - Establishes an exception to destination sourcing
- As of October, requires marketplace facilitators to collect and remit sales tax on behalf of marketplace sellers

<https://leg.colorado.gov/bills/hb19-1240>

Marketplace Facilitator

- An individual or legal entity that operates a marketplace
- May have physical nexus

amazon

Walmart

Google

Etsy

ebay

Marketplace Seller

- Someone who sells goods through a marketplace facilitator

Colorado Municipal League (CML) October 2018



72 self-collected municipalities

Largest population centers



Consensus – risks to self-collecting proceeding independently:

- Lawsuit or
- Undue burden prohibited by Wayfair



Agreement that CML and its members should lead the **discussion and propose the solution**, along with Department of Revenue, rather than let the legislature decide

Risks discussed

- Single state vs. numerous taxing jurisdictions
- Colorado not part of Streamlined Sales & Use Tax Agreement (South Dakota is)
- If one jurisdiction proceeds alone, could bar other jurisdictions until court case is resolved

May 2020 - Voluntary Compliance

- All agreed to continue moving forward with voluntary compliance for remote sellers
 - Keep the sales tax system as simple as possible according to *Wayfair*
- Per CML, if all 72 self collecting home rules were to implement their own collection from out of state retailers, it would surely cause a challenge under the Supreme Court case
- The State's single point of remittance software is an option to align with what South Dakota did and reduce the risk of a constitutional challenge

State's single point of remittance software (SUTS System) & single GIS system

- Remote sellers with economic nexus can file & pay via the SUTS System
- Available for any business not just those with economic nexus only
- Businesses with physical presence would still need to have a Fort Collins sales tax license
- \$17.5k fee for software integration – can also do manually without a fee, ↑ staff time
- Additional filing option for businesses – paper, Fort Collin's online system or the SUTS System

May 2020 - Model Ordinance

- Has language around economic nexus and marketplace facilitators
- CML suggests adopting this language if cities move away from voluntary compliance and into collecting from out-of-state, remote sellers that only have economic nexus
- CML recommends doing this for cities that are going to use the DOR single point of remittance
- CML asks that cities use model ordinance language when it is available – the goal is simplification under *Wayfair* to avoid any lawsuits

Model Ordinance

Requires a code changes for language around economic nexus & marketplace facilitators

Economic Nexus

- Definition of engaged in business
- Who is taxed and who is compelled to collect the tax

Marketplace Facilitator

- Definition of retailer
- Who collects the tax

What are other cities doing?

- Boulder – too soon and too much risk
- Aurora – ordinance at Council, ready to move ahead
- Golden – plans to participate, SUTS first as admin decision, model ordinance this summer
- Thornton – plans to participate, SUTS first and model ordinance later
- Centennial – plans to participate, no use tax, may have issues with economic nexus

Majority of home rule cities need to participate to keep the sales tax system as simple as possible according to *Wayfair* – critical for larger home rules like Fort Collins to join

Both the SUTS agreement and model ordinance require legal review

Local sales tax collection - why is Fort Collins not state-collected?

- Control of sales tax base
- State of Colorado has 87 sales & use tax exemptions
 - Reduction of collections over \$2 billion
- More targeted collection & enforcement
 - Local program can more thoroughly educate businesses and follow up with auditing where appropriate

SUTS System and model ordinance compatible with maintaining home rule self-collecting status

Top Internet Retailers Licensed in Fort Collins

Nationally e-commerce represents 11.8%* of total retail sales

Retailer**	Ecommerce Share	Licensed
Amazon	49.1%	Yes
eBay	6.6%	No
Apple	3.9%	No
Walmart	3.7%	Yes
The Home Depot	1.5%	Yes
Best Buy	1.3%	Yes
QVC Group	1.2%	No
Macy's	1.2%	Yes
Costco	1.2%	No
Wayfair	1.1%	No

Other licensed ecommerce retailers:

- Zappos.com Inc
- Fanatics Inc
- Chewy Inc
- Overstock.com
- 1-800-Flowers.com Inc
- VitaCost.com Inc
- 1-800 Contacts Inc
- Chegg Inc
- Bonobos Inc
- Rent the Runway
- AG Interactive Inc
- Audible Inc
- Spotify

*U.S. Census Quarterly Retail E-Commerce Sales 1st Quarter 2020

**Top 10 US companies based on % of e-commerce sales, eMarketer, July 2018

Estimated e-commerce retail sales tax

- State estimates \$72 million in 2020 from economic nexus and marketplace facilitators*
- Equivalent to 2.1% of collections
- 2.1% is \$2.5M Fort Collins
- Some retailers already remitting voluntarily in Fort Collins

Marketplace facilitators

- More than half of items sold on Amazon through third-party marketplace**
- Some facilitators turned off collection of local taxes on behalf of sellers, leaving them no way to collect the tax

*Colorado Legislative Council Staff – Economic & Revenue Forecast December 2019, p.28

**Amazon 2017 Annual Report, Letter to Shareholders

Options:

1. Continue voluntary compliance (current state)
2. Pursue SUTS System and model ordinance (staff recommendation)
 - City stays self-collected
 - Voluntary compliance becomes mandatory
 - Additional filing option for businesses

