



CITY AND COUNTY OF DENVER

DEPARTMENT OF LAW

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Memorandum

To: President Clark and Council Members
From: Troy Bratton
Subject: Update on 2018 State, City, and Special District Ballot Measures
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With the November 2018 election quickly approaching, we wanted to update you on all of the questions that will be on the ballot at the state and municipal level. This memo is intended to give you a snapshot of the ballot content and the city agencies that may be affected. The memo also provides guidance on allowable election activities to you as elected officials. Please review the information below and feel free to contact Kirsten or me with any questions you may have on these.

Statewide Referred and Initiated Measures

The following measures are currently on the November 2018 ballot:

Measures Referred by the Colorado General Assembly

Amendment V: Reduced Age Qualification for General Assembly Members

- **Description:** This amendment lowers the required age for General Assembly candidates from 25 to 21.
- **Impact:** None.

Amendment W: Judicial Retention Ballot Language

- **Description:** Currently, the Colorado constitution requires county clerks to write separate retention questions on the ballot for each judge or justice standing for retention. Amendment W would change that language so that county

clerks can write a single ballot question for each level of courts, thereby shortening the ballot.

- **Impact:** Denver Elections advocated for the change because it will shorten the ballot length, saving printing and mailing costs.

Amendment X: Definition of Industrial Hemp

- **Description:** The definition of industrial hemp was added to the constitution by amendment 64. This amendment removes the definition from the state constitution and requires that industrial hemp have the same definition as in federal law, or if federal law allows a state to define industrial hemp, as in state statute. Federal law recently changed to permit more hemp cultivation. Having the definition of industrial hemp in the state's constitution prevents the legislature from adapting state laws in accordance with changes at the federal level. This amendment was designed to provide the state legislature with more flexibility in regulating industrial hemp.
- **Impact:** This amendment could indirectly affect Excise and Licenses and any other department that regulates marijuana by making clear that the city is preempted from creating any other definition of hemp.

Amendment Y: Independent Commission for Congressional Redistricting

- **Description:** This amendment would create a 12-member independent congressional redistricting commission that would be responsible for redistricting Colorado's seven U.S. House districts. The commission would include four members from the state's largest political party, four from the state's second largest political party, and four that are not affiliated with any political party. The final map would require the approval of eight of the 12 members, including at least two members that are not affiliated with any political party. It would also require approval by the Colorado Supreme Court. Under the amendment, districts would need to be competitive.
- **Impact:** Neither this amendment nor Amendment Z below have a direct impact on Denver. Though precinct lines and, ultimately, city council district lines, are drawn off congressional and state legislative district boundaries, lines, these amendments only affect the process for drawing congressional and state legislative lines at the state level.

Amendment Z: Independent Commission for State Legislative Redistricting

- **Description:** This amendment would create a 12-member independent state legislative redistricting commission that would be responsible for redistricting Colorado's 65 House districts and 35 Senate districts. The commission

would include four members from the state’s largest political party, four from the state’s second largest political party, and four that are not affiliated with any political party. The final map would require the approval of eight of the 12 members, including at least two members that are not affiliated with any political party. Under the amendment, districts would need to be competitive.

- Impact: See Amendment Y above.

Amendment A: Removal of Exception to Slavery Prohibition for Criminals

- Description: The Colorado Constitution contains a provision that allows convicted criminals to be forced to work in prison without pay or restitution. Amendment A would amend the state Constitution to repeal an exception to the ban of slavery which allowed compulsory labor, involuntary servitude, or slavery if for the punishment of a crime
- Impact: The adoption of this amendment would not affect any existing work programs currently administered in the Denver County jail.

Measures Initiated by the People

Amendment 73: Establish Income Tax Brackets and Raise Taxes for Education

- Description: The measure would increase income taxes for people earning above \$150,000 per year. The increases would be according to brackets, rather than the state's current flat tax rate of 4.63 percent. There would be no change in income taxes for those earning less than \$150,000, which would continue to be taxed at the current flat tax rate. The initiative would also increase the corporate tax rate from 4.63 percent to 6 percent. The measure would decrease property taxes levied by school districts, though it does not affect property taxes levied by other local governments. Under the measure, the residential assessment ratio would be decreased to 7 percent and the non-residential assessment ratio would be decreased to 24 percent. (Note: under current law, the residential assessment ratio was due to fall below 7 percent, so this measure would actually set a higher ratio, rather than reducing it.) The measure would establish a fund called the Quality Public Education Fund. Revenue generated from the new taxes would be dedicated to the Quality Public Education Fund to fund preschool through 12th-grade public education. Specifically, the fund would be used to increase the statewide base per-pupil funding and increase spending for special education, preschool, English language proficiency, and gifted programs, among other things.
- Impact: This affects the Department of Finance, which is aware of the measure and is analyzing it. The measure largely affects the State Property Tax

Administrator and county assessors. Also, some have opined that this amendment will be hard to reconcile with Gallagher.

Initiative #97 Minimum Distance Requirements for New Oil and Gas Projects

- **Description:** This initiative was designed to mandate that new oil and gas development, including fracking, be a minimum distance of 2,500 feet from occupied buildings and other areas designated as vulnerable. Vulnerable areas are defined by the initiative as "playgrounds, permanent sports fields, amphitheaters, public parks, public open space, public and community drinking water sources, irrigation canals, reservoirs, lakes, rivers, perennial or intermittent streams, and creeks, and any additional vulnerable areas designated by the state or a local government." The current restrictions as of June 2018 specifies that wells must be 500 feet from homes.
- **Impact:** This may affect Community Planning and Development and the Department of Health and Environment which is analyzing what local regulations may be imposed on the industry which is predominantly regulated by the state. The measure may also immediately affect the Department of Aviation, as DEN property is the only place in Denver where extraction is occurring.

Initiative #108 Compensation to Owners for Decreased Property Value Due to State Regulation

- **Description:** The initiative was designed to amend the state constitution to require that property owners be compensated for any reduction in property value caused by state and local laws or regulations. Backed by the oil and gas industry, it will overturn decades of regulatory takings case law.
- **Impact:** The proposed initiative arguably affects any city law, regulation, or rule. Anyone in the CAO who advises any city department or agency on regulatory matters that affect the value of anyone's property should be aware of and be prepared to analyze this measure. This measure, by far, threatens to have the most pervasive impact on Denver and the CAO.

Initiative #126 Limits on Payday Loan Charges

- **Description:** This initiative would restrict the charges on short term loans—commonly known as payday loans—to a yearly rate of 36 percent.
- **Impact:** None.

Initiative #153

Sales Tax Increase and Bond Issue for Transportation

- **Description:** Last session, the General Assembly passed Senate Bill 1, which dictated that, if a citizen initiative to approve a bond issue for transportation is not passed in November 2018, a bond issue would be referred to the November 2019 ballot. Two different initiatives were filed for the November 2018 ballot. One included a tax increase to repay the debt and the other required repayment of the debt from the general fund. SB 1 also dictated different funding allocation provisions depending on whether a citizen initiative bond issue is passed in 2018 and whether the initiative includes a tax increase. This initiative would increase the state sales tax rate for 20 years to fund transportation. The Let's Go Colorado Campaign - a coalition of Colorado businesses, local governments and civic organizations and spearheaded by the Denver Chamber of Commerce and the Colorado Contractors Association - has been working on an initiative to seek new revenue to help fund Colorado's infrastructure. The coalition has recently coalesced around Initiative #153 that would raise the state sales tax by 0.62% - or about six cents on a ten-dollar purchase.
- **Impact:** If passed, this initiative will distribute 45% of the revenue to the State Highway Fund for bond repayments for state projects and, after required payments have been made each year, maintenance and pay-as-you-go projects. The next 40% of the revenue would be allocated to the newly created Local Transportation Priorities Fund. This revenue would be divided between cities (50%) and counties (50%). The county-by-county distributions will be based off of the current HUTF local distribution formula and will be exempt from any revenue or spending limitations under TABOR. The final 15% of new revenue will be allocated to the newly created Multimodal Transportation Options Fund. Up to the first \$30 million of this fund may be used for bond repayment on projects matched by local dollars. The remaining 85% would be allocated by the Transportation Commission for local multimodal projects and the remaining 15% would be allocated for state projects. Assuming a 2020 collection start date, the tax will generate \$27.5 million for Denver. The initiative, therefore, will impact both Finance and Public Works

Initiative #167

Bond Issue for Transportation

- **Description:** In response to the coalition's efforts to seek new revenue, John Caldara and the Independence Institute are pushing their "Fix Our Damn Roads" campaign and Initiative #167 to appear on the November ballot. If passed, Initiative #167 would require the state to raise \$3.5 billion in bonds (without raising taxes or fees) with a maximum repayment cost of \$5,200,000 over 20 years. All of the voter approved proceeds would be TABOR exempt and excluded from state fiscal spending year limits. The proceeds would go solely to state road and bridge expansion, construction,

maintenance, and repair on a specified list of over 60 projects in 15 specific transportation planning regions across the state. The measure would authorize \$3.5 billion in bonds with proceeds to be used exclusively for road and bridge expansion, construction, maintenance, and repair of specific statewide projects, and not to be used for transit, administration, or indirect costs and expenses. Under the initiative, the principal and interest on the borrowed money would be paid out of the state budget, and the borrowed money and interest would be excluded from the state's spending limit. The state's executive branch agencies would be prohibited from transferring proceeds from the bonds to any other program or purpose.

- **Impact:** The avowed purpose of this measure is to undermine Initiative 153 above and contribute to the defeat of the sales tax approach contained in the other measure, thus depriving Denver of the extra dollars noted above. But even though this measure doesn't have a local revenue share, it may result in more or faster CDOT projects being completed in Denver County that will have a Public Works interface.

Initiative #173 Campaign Finance

- **Description:** Under this initiative, if a candidate subject to the contribution limits set forth in subsection 1 of section 3 in article XXVIII in the Colorado Constitution directs more than one million dollars to their own campaign, candidate committee, or another committee or entity for the purpose of supporting or opposing a candidate in the same election, then all candidates in the same election would be entitled to accept aggregated contributions in the primary and general election at five times the rate authorized by subsection 1 of section 3 in article XXVIII in the Colorado Constitution.
- **Impact:** None.

Municipal Referred and Initiated Measures

The following measures are currently on the November 2018 ballot:

Measures Referred by the Denver City Council

Trails and Open Space Tax

- **Description:** The ordinance increases the sales and use tax by a rate of 0.25 percent and dedicates the revenue derived from the tax rate increase to fund Denver parks, trails, and open space. The measure is expected to generate nearly \$46 million if adopted.

- Impact: Finance, Parks and Recreation

Right to Initiative and Referendum

- Description: Currently, a petition to initiate an ordinance or to refer an enacted ordinance must contain, at minimum, a number of signatures equal to five (5) percent of the total vote for the office of Mayor in the last election at which a Mayor was elected. This ordinance changes the petition signature requirement to two (2) percent of the total number of active registered electors in the City and County of Denver as of January 1 of each odd-numbered year.
- Impact: Elections

Qualifications for Lateral Hires to the Denver Police Department

- Description: The amendment will allow an applicant to the Classified Service of the Denver Police Department who is currently certified as a Colorado peace officer (or out-of-state equivalent) and has a minimum of two (2) years' experience to, at the discretion of the Chief of Police or designee, start the Denver Police Academy at the rate of pay for Police Officer 2nd grade. Following successful completion of the Denver Police Academy and a period of 9 months of service (following graduation), that applicant will become a Police Officer 1st grade. Likewise, an applicant who is currently certified as a Colorado peace officer (or out-of-state equivalent) and has a minimum of four (4) years' experience will, at the discretion of the Chief of Police or designee, start the Denver Police Academy at the rate of pay for Police Officer 1st grade. The Chief of Police will also have ability to evaluate applicants with prior law enforcement experience and peace officer certification on a case-by-case basis in assessing and determining suitability for hiring at an elevated pay grade.
- Impact: Safety

Authority for the Clerk and Recorder to Make Appointments

- Description: The amendment makes the Elections Director a career service employee rather than an appointee. The amendment also gives the clerk the flexibility of two additional appointees to address the office's changing needs.
- Impact: Elections

Matching Fund for Campaign Finance Donations

- **Description:** This ordinance replaces a similar ordinance that would have appeared on the November 2018 ballot as a citizen initiative. The ordinance puts new lower limits on campaign contributions and creates a public financing mechanism whereby a participating candidate would receive a 9-to-1 match on contributions.
- **Impact:** Finance, Elections

Measures Initiated by the People

Democracy for the People

- **Description:** The ordinance puts new lower limits on campaign contributions and creates a public financing mechanism whereby a participating candidate would receive a 9-to-1 match on contributions. (Note: Proponent may withdraw this measure in favor of a measure council may refer, at which point, an alternate-but-related question will be on the ballot.)
- **Impact:** Finance, Elections

College Affordability Fund

- **Description:** The ordinance increases the sales and use tax by a rate of 0.08 percent and dedicates the revenue derived from the tax rate increase to fund college scholarships support services to promote completion of that degree, including career and academic counseling, tutoring, mentoring, and financial aid assistance. The ordinance creates a nonprofit to direct the revenue.
- **Impact:** Finance

Caring 4 Denver

- **Description:** The ordinance increases the sales and use tax by a rate of 0.25 percent and dedicates the revenue derived from the tax rate increase to fund mental health services and treatment for children and adults; suicide prevention programs; opioid and substance abuse prevention, treatment, and recovery programs; housing and case management services to reduce homelessness, improve long-term recovery, and reduce the costly use of jails and emergency rooms for those with mental health and substance abuse needs. The ordinance creates a nonprofit to direct the revenue.
- **Impact:** Finance, Public Health and Environment, Human Services

Sales Tax for Healthy Food for Denver’s Kids

- **Description:** The ordinance increases the sales and use tax by a rate of 0.08 percent and dedicates the revenue derived from the tax rate increase to provide resources for the Healthy Food for Denver’s Kids Initiative. The ordinance creates a Denver Food Commission to direct the revenue.
- **Impact:** Finance

Special District Referred Measure

Urban Drainage and Flood Control District Mill Levy

- **Description:** At its creation, the district had a 1.0 mill. TABOR has had a ratchet-down effect on UDFCD’s mill that reduced it over time to 0.56 mills, resulting in an annual funding decrease of \$23 million when compared with the original 1.0 mill. The board, through this measure, is asking voters to restore the 1.0 mill.

Guidance Regarding Political Activities by City Employees and Officials

City laws and rules generally prohibit the use of public resources for making contributions or contributions in-kind to political campaigns, including campaigns related to initiated or referred state or local ballot issues. For example, section 15-47 of the DRMC defines the “dos and don’ts” for city officials as follows:

- You may not expend public monies to urge electors to vote for or against a:
 - Ballot issue or question after title has been set;
 - Referred measure; or
 - Recall question.
- You can, however, do the following:
 - Answer questions about ballot measures as long as you didn’t solicit the question;
 - Expend \$50 or less of public money on letters, phone calls, or other activities incidental to expressing your opinion on the measure;
 - Provide the language of the title or text of the measure to a constituent;
 - Dispense a factual summary that contains arguments for and against the measure (the summary cannot contain a conclusion);
 - Express your personal opinion;
 - Pass a resolution as a body and report the passage of that resolution through established means; and
 - Use your personal time and money to advocate on an issue.

Accordingly, employees and officials are not permitted to use city resources for political activities unless the activity is specifically authorized in section 15-47, DRMC, as stated above. As always, please contact Kirsten or me with any campaign finance questions you may have.