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## Finance Committee Summary

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Wednesday, May 6, 2009

1:30 p.m.

3<sup>rd</sup> Floor Council Conference Room

**Committee Members Present:** Faatz, Chair; Boigon, Vice-Chair; Brown, Hancock, Lehmann  
**Other Council Present:** Garcia, Johnson, Madison, Nevitt, Robb

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*Agenda:*

- 1) *Historic Rebate Program update*
  - 2) *Auditor's Office process revisions*
  - 3) *Zoo Facilities Agreement amendment*
  - 4) *Issuance of General Obligation Bonds, Series 2009 A & B*
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**1) Historic Rebate Program update:**

Committee Discussion

Beth Machann, Dept. of Finance – Controller's Office, announced that City staff decided not to propose suspension of the 2009 Historic Rebate Program and reimbursement checks for those property owners who qualify under the program will be sent out. City staff will be proposing to Council during the budget process the intent to suspend the program in 2010. Ed Scholz, Dept. of Finance – Budget & Management, noted that staff will continue its outreach this year to the constituents who qualify for this program, but that they will continue to look towards suspending the program because of fiscal budget issues anticipated for 2010. Councilmember Madison said she was glad to hear the news and suggested that a sunset date be included in recommendations for next year, noting that programs like these are vital to preservation initiatives.

**2) Auditor's Office process revisions:**

Committee Action

The Committee approved amending Section 20-276 of the Revised Municipal Code to add language that would allow the Auditor's Office in cases of suspected or potential criminal activity to share information with the District Attorney's Office prior to the release of an audit report to the public.

Committee Discussion

Auditor Dennis Gallagher stated that under Charter requirements, the Auditor's responsibilities include examining operations of City agencies. During the course of their audits sometimes auditors come across "suspected" criminal activities. The proposed changes to the Revised

Municipal Code would allow the Auditor's Office, when suspected criminal activity is occurring, to provide information to the District Attorney's Office prior to any report made public. The additional amendments would outline the steps for those procedures. District Attorney Mitch Morrissey, said it was difficult pursuing criminal investigations if the suspects are notified about potential criminal behavior through an audit report. He stated that these changes would provide proper procedures to investigate should there be suspected criminal activities. Joe Morales, District Attorney's Office (DA), said mostly what this will address is considered "white collar crime". The change in process will prevent an audit report from giving clues to individuals suspected of criminal behavior, and would enhance the integrity of the process and people.

Councilmember Boigon asked what prevented the DA's Office from doing that now and if they could come back to Committee next year to report if this change has been effective. Mr. Morrissey said he was not comfortable with doing that because the information is confidential and would involve the Grand Jury. Mr. Morales added that they operate under the confines of secrecy on these matters. There are two Grand Juries and they meet twice every other week. There was a particular frustrating situation recently that prompted this change in process, stated Mr. Morrissey. That situation will most likely have a criminal investigation. Clay Vigoda, Auditor's Office, stated this would not cause an onerous process for their office and would not cause any type of backlog. Auditor Gallagher said Kip Memmot from the Auditor's Office will continue to meet with Councilmembers to brief them on these issues.

### **3) Zoo Facilities Agreement amendment:**

#### Committee Action

The Committee approved amending the Zoo Facilities Agreement to allow the Zoological Foundation to utilize \$26.5 million of un-issued General Obligation Bonds authorized by voters in 1999. The amendment will allow the construction of the new Asian Tropics exhibit project to move forward and to give the Foundation additional time to complete its fundraising activities to raise its portion of the matching requirement (\$10.4 million) by 2013.

Councilmember Faatz did not support the proposal to amend the agreement noting that she was not convinced that language in the original legislation allows use of the un-issued bonds without a one to one match required by the original proposal approved by the voters in 1999. She did acknowledge that unlike the similar amendment to the Denver Museum of Nature & Science agreement the Foundation has a stronger argument for its proposal.

#### Committee Discussion

Margaret Danuser, Dept. of Finance-Treasury, explained that the Zoo Foundation has raised approximately \$44.6 million of the \$55 million total match required by the voters authorized in the 1999 General Election. The voters authorized \$62.5 million in General Obligation bonds to support construction and improvements, including the Asian Tropics project, at the Zoo. She explained that due to the current economic slowdown, fundraising has been challenging for the Foundation and that they will need more time to complete their matching fund requirement of approximately \$10.4 million. The proposed amendment would allow the Zoo to utilize the remaining \$26.5 million from the 1999 bonds along with its own additional monies (\$16.4 million) to support the construction of the Asian Tropics exhibit.

Craig Piper, Zoo Foundation, explained that he began to meet with City staff last year when the economy began to slow down and it was difficult securing the last fundraising dollars. He stated that this proposal will help them to move forward and not lose any of the funds authorized by voters in 1999. The proposal will require that the Zoo raise the remaining matching funds (\$10.4 million) no later than December 30, 2013. Mr. Piper stated that with the combined funding of the remaining 1999 monies and \$16.4 million of their matching funds, the project will generate several hundred jobs and hopefully energize other fundraising opportunities. He added that all future unrestricted monies/gifts would be dedicated to paying back this agreement.

Councilmember Faatz said she believes that the original agreement would not allow use of the 1999 bond monies until the Zoo has also met its obligation to match all funds. She has asked legal counsel to opine on the "simultaneous" language used in the original agreement, but no one has clarified what that meaning is. Councilmember Boigon asked what the legal opinion was of the City Attorney's Office regarding the one-to-one match. Jennifer Welborn, City Attorney's Office, read the November 4, 1998 agreement between the City and the Zoo Foundation and said she does not believe that the original agreement and/or Manager of Revenue required that the Zoo was to have all matching funds in hand prior to requesting bond monies. Councilmember Faatz asked how much of the endowment is included in the match. Mr. Piper said that \$10 million is in the endowment, but he is not intending on utilizing the endowment. He added that if they are allowed to draw down on the 1999 bonds they could obtain a contractor and start construction on the project this year, with Zoo Board authorization. Councilmember Brown noted that Zoo fundraising has become extremely difficult and that certain organizations use unscrupulous tactics against Zoo amenities. Mr. Piper agreed that there are extremists and that some don't believe in the work of Zoos and their conservation techniques. He noted that the Denver Zoo is noted for its work and that many staff came to work there from different parts of the world.

Councilmember Garcia questioned why the Zoo included a self-imposed deadline in the contract and what happens if they don't meet the financial deadline. Mr. Piper said they typically can raise \$5 million annually from fundraising and that they did not want a long pay-back process. In addition, they didn't want to lose the funding opportunity from the 1999 bonds. He added that it is their intent to provide Council with periodic reports and it is their goal not to ask for additional time to pay back any funding sources.

**4) Issuance of General Obligation Bonds, Series 2009 A & B (for support of Better Denver and Zoo projects):**

Committee Action

The Committee approved authorizing issuance of \$125 million of the City's General Obligation Bonds, Series 2009 A & B. Series 2009A bonds will be used to pay off outstanding Commercial Paper balances and additional project funding for Better Denver bond projects and to fund up to \$26.5 million of the remaining 1999 Zoo Bond authorization to help finance the Asian Tropics exhibit at the Zoo. Series 2009B bonds will refund outstanding Series 2000 Various Purpose Bonds to reduce debt service payments and to lower interest rates.

Committee Discussion

Margaret Danuser, Dept. of Finance-Treasury, stated that the department would like to issue the bonds in June and that the bonds would be a fixed rate and that the City's credit ratings continue to stay very good (Aa1/AAA/AA+) from Moody's, Standard and Poor's, and Fitch. The City expects to realize approximately 6% cost savings on the Series 2009B. This transaction will allow the City to lower its current interest rates and to reduce debt service payments. The City conducted a competitive request for proposal process to select an underwriting team for the transaction and 11 firms responded. RBC Capital Markets was selected to serve as the Senior Underwriter and the co-managers on the team are Wachovia, Robert W. Baird & Co., and Estrada Hinojosa, and Piper Jaffray continues to be the City's financial advisor.

Councilmember Boigon voiced concern about Wachovia's recent banking problems. Ms. Danuser commented that the Wachovia Wells Fargo merge has strengthened its position and that she feels they have the capability to sell bonds. She noted that the intent is to sell the bonds in retail markets on one day and then other markets the next day and the City's position is that the transactions will be successful. Councilmember Faatz said she did her homework on how the process was conducted and said that a negotiated sale versus a competitive process is not always a good way to go based on what experts are saying, and she asked if the City has a debt structure committee in place to evaluate these things. Under normal circumstances a competitive sale process would be better, stated Ms. Danuser. But these are unprecedented times, explained Ms. Danuser, and the City's team, including Piper Jaffray, evaluates the structure and its benefits.

Councilmember Faatz asked if SWAP transactions are beneficial. Ms. Danuser commented that these types are subjective, but are designed to be used as a hedge in various markets where resetting dates and variable rates are beneficial impacts to the budget. The Councilwoman said she would like to schedule another broad discussion on this matter to focus on negotiated sales and how they differ from competitive sales. Councilmember Garcia stated there is always a debate over the two types of structures and the instability of the market now explains why the City is going the negotiated route. He said this transaction makes sense, but that there should be some level of conversation with Councilmembers on these types of decisions. Councilmember Faatz agreed and said a larger group beyond the "underwriting team" should be involved, but she is not sure who that should be. The Councilwoman also suggested that the City consider offering the bonds to small investors or the public, noting that would be a good way to say thank you to constituents for their support of the bond programs. Ms. Danuser said that type of issuance requires more work and has higher costs associated with a public transaction, but that the City just recently issued over \$8 million in bonds from the "2007 Bond Program".