



## **City Council of Commerce City Special Meeting**

Council Chambers, 7887 East 60th Avenue

**Monday, September 12, 2011 3:00 p.m.**

**1. Call to Order/Roll Call -3:00**

**2. Pledge of Allegiance**

**3. Budget Discussion**

- a) City Council Budget Discussion **Tab 1**

**4. Resolution**

- a) **Resolution 2011-55** A RESOLUTION DECLARING THE INTENT OF THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, TO ISSUE BONDS FOR QUALIFIED RESIDENTIAL RENTAL HOUSING IN 2012 AND TO CARRYFORWARD THE 2011 ASSIGNED ALLOCATION IN THE AMOUNT OF \$2,024,925 AND AUTHORIZING ALL ACTIONS NECESSARY THERETO **Tab 2**

**5. Emergency Ordinance**

- a) **Ordinance 1872** AN EMERGENCY ORDINANCE AMENDING THE FRANCHISE BETWEEN THE CITY OF COMMERCE CITY AND PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY TO EXTEND THE TERM OF THE FRANCHISE **Tab 3**

**6. Executive Session**

- a) Executive session for the purpose of receiving legal advice pursuant to C.R.S. 24-6-402(4)(b) regarding a land use issue.

**7. Adjourn**



**Council Communication**

**City Council Meeting:** 12 Sep 2011

**Prepared:** 07 Sep 2011

**Number of Attachments:** None

**Subject:** 2012 Budget

**Presenter:** Roger Tinklenberg

**Recommended City Council Action:**

This is for discussion and direction to staff.

**Summary Statement:**

The budget session portion of the meeting will deal with the following topics and estimated start times:

3:00 - Welcome & Overview

3:15 - Vulnerable Revenues & Refuse Collection

4:00 - CIPP Projects & Options

4:40 - Legislative Budget

5:40 - Dinner Break

6:10 - Budget Wrap-up & Next Steps

6:20 - GID Budget

6:30 - Other Council Business (Ordinance, Resolution & Executive Session)

**Next Steps:** Staff will take Council's direction to complete the proposed budget.

**Expenditure Required:** None

**Source of Funds:** N.A.

**Policy Issue:** Council has the authority and responsibility to approve the annual budget.

**Alternative:** None

**Background Information:**

The preliminary budget numbers were presented to Council during the meetings in August. The revenues were estimated and the City Manager's recommended budget expenditures were submitted to Council. Then each City department made a presentation regarding their department and budget. The Finance Department has updated some revenue estimates, for example the assessed valuation estimates were received from the county on August 29. The preliminary budget was distributed to Council this past week in either electronic form or hard copy.



**Council Communication**

**City Council Meeting:** 12 Sep 2011

**Prepared:** 08 Sep 2011

**Number of Attachments:** One

**Subject:** Resolution Authorizing Carry Forward of 2011 PAB Allocation

**Presenter:** Roger Tinklenberg

**Recommended City Council Action:**

Staff recommends approval of Resolution No, 2011-55.

**Summary Statement:**

On August 29 Council adopted Resolution No. 2011-50 authorizing the carryforward of the 2011 Private Activity Bond (PAB) allocation. In an effort to preserve flexibility the resolution was written very generally, stating that the purpose was for redevelopment activities. However, bond counsel stated the resolution was too general and advised specifying what the intended use will be. Therefore, the attached resolution has been redrafted with bond counsel's input, for the City Council's consideration.

This resolution carries forward the 2011 PAB allocation for the purpose of funding qualified residential rental housing.

**Next Steps:** Staff will submit the appropriate documents to the state and the IRS.

**Expenditure Required:** None

**Source of Funds:** N.A.

**Policy Issue:** None

**Alternative:** Relinquish the allocation to the statewide balance.

**Background Information:**

Private activity bonds are issued tax-exempt for qualified purposes. Qualified

purposes include single-family housing, multi-family housing, student loans, industrial development, redevelopment and qualified facility bonds for such things as airports, mass transit facilities and wastewater treatment plants. PABs typically are used for housing purposes due to the difficulty in using them for other purposes.

## RESOLUTION 2011-55

### **A RESOLUTION DECLARING THE INTENT OF THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, TO ISSUE BONDS FOR QUALIFIED RESIDENTIAL RENTAL HOUSING IN 2012 AND TO CARRYFORWARD THE 2011 ASSIGNED ALLOCATION IN THE AMOUNT OF \$2,024,925 AND AUTHORIZING ALL ACTIONS NECESSARY THERETO**

WHEREAS, the City of Commerce City, Colorado (the “City”), is a legally and regularly created, established, organized and existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State of Colorado and a Home Rule Charter of the City (the “Charter”); and

WHEREAS, the City is authorized by its Charter, the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the “Act”), and the Colorado Supplemental Public Securities Act, Article 57, Title 11, Section 201, et seq., Colorado Revised Statutes, as amended (the “Supplemental Act”), to finance one or more projects (which includes any land, building or other improvement and real and personal properties) to the end that qualified residential rental facilities for low- and middle-income persons or families may be provided, which promotes the public health, welfare, safety, convenience and prosperity; and

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the “Allocation Act”), the City has received a direct allocation of the State of Colorado’s Private Activity Bond Ceiling (the “2011 Allocation”) in the amount of \$2,024,925; and

WHEREAS, the City wishes to declare its intention to issue its revenue bonds, in one or more series, or, in lieu of issuing all or any series of such revenue bonds, to issue, in connection with financing qualified residential facilities for low- and middle- income families , which facilities will be located within the boundaries of the City; and

WHEREAS, this Resolution is being adopted to satisfy the requirements of the City with respect to establishing its intent to issue, or to cause to be issued, revenue bonds and with respect to establishing a carryforward purpose for the City’s private activity bond volume cap allocation pursuant to the Allocation Act.; and

WHEREAS, the City has identified an intended qualified residential rental housing project; and

WHEREAS, the issuance of revenue bonds for such purposes constitutes a project under the Act; and

WHEREAS, the 2011 Allocation is not adequate to fund the intended project; and

WHEREAS, additional time to perfect the intended project is desired.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO as follows:

Section 1. In order to benefit the residents of the City, the City hereby declares its intent to issue its revenue bonds (to finance qualified residential rental housing construction or any other projects which have a “carryforward purpose” as defined by Section 24-32-1703(4), Colorado Revised Statutes, as amended) in one or more series of (the “Bonds”) in an aggregate principal amount not to exceed \$10,000,000.

Section 2. The City Council hereby finds, determines, recites and declares that the Bonds shall not constitute the debt, multiple fiscal year obligation or indebtedness of the City, the State or any political subdivision of the State within the meaning of any provision or limitation of the State Constitution or statutes and shall not constitute nor give rise to a pecuniary liability of the City or a charge against the City’s general credit or taxing powers, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the City in such person’s individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 3. That the City Council hereby finds, determines, recites and declares that the issuance of the Bonds in connection with financing such residential facilities will promote the public purposes set forth in the Act including, without limitation, assisting persons or families of low- and middle-income in obtaining decent, safe and sanitary housing.

Section 4. That the City Council hereby finds, determines, recites and declares the City’s intent that this Resolution constitutes an official indication of the present intention of the City to issue, or to cause to be issued, the Bonds as herein provided.

Section 5. That the officers of the City are authorized and shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution with such technical variations, additions, or deletions therein as the City Attorney may deem necessary or appropriate and not inconsistent with the approval thereof by this Resolution and to take such actions as contemplated by the Internal Revenue Code of 1986, as amended (the “Code”) and the Allocation Act that may be necessary to manage, preserve, carryforward, delegate and/or assign the 2011 Allocation pursuant to the Code and the Allocation Act.

Section 6. That if any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. All actions not inconsistent with the provision of this Resolution heretofore taken by the Council and the officers of the City directed toward the assignment of the Assigned Allocation and the authorization of the Assignment hereby are ratified, approved, and confirmed.

Section 8. Nothing contained in this Resolution shall be construed as requiring the City to issue the Bonds and the decision to issue the Bonds shall be in the complete discretion of the City Council of the City.

Section 9. This Resolution replaces Resolution No. 2011-50 and therefore Resolution No. 2011-50 is repealed.

RESOLVED AND PASSED this 12th day of September, 2011.

BY: \_\_\_\_\_  
Paul Natale, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, CMC, City Clerk



**Council Communication**

**City Council Meeting:** 12 Sep 2011

**Prepared:** 08 Sep 2011

**Number of Attachments:** 2

**Subject:** Emergency Ordinance Amending Franchise Agreement with Excel Energy

**Presenter:** Tom Acre

**Recommended City Council Action:**

Staff recommends City Council approve Ordinance No. 1872 amending the existing Franchise Agreement with Xcel Energy extending the term of the existing agreement an additional 6-months.

**Summary Statement:**

- Staff in the City Manager's Office and Legal Department have been negotiating a revised Franchise Agreement with Xcel Energy.
- On May 9, 2011 City Council passed an emergency ordinance extending the existing franchise agreement for 4-months to allow for continued negotiations.
- Negotiations have continued, however City Staff and Xcel representatives continue to have divergent views on several key issues including environmental matters.
- Concurrent with the franchise agreement negotiations the Public Utilities Commission heard arguments from Xcel Energy and several entities including Commerce City regarding the proposed environmental tariff.
- The PUC ruled on the environmental tariff and the outcome was agreeable to Commerce City.
- Xcel Energy filed exceptions to the PUC decision on the environmental tariff PUC on Tuesday September 6, 2011 and staff desires an extension to allow for continued negotiations as the PUC considers Excel Energy's exceptions.

**Next Steps:** Continue negotiations with Xcel Energy

**Expenditure Required:** No expenditure is required

**Source of Funds:** n/a

**Policy Issue:** Commerce City granted a franchise to Xcel Energy to provide electrical and gas service to residents and businesses. An existing Franchise Agreement is in place which is being revised and updated since the original term expired. A franchise agreement is needed to allow for the City to collect revenue in the form of franchise fees from Xcel energy for use of City right-of-way in the process of providing service.

**Alternative:** City Council could elect to not extend the term of the existing franchise agreement to allow for continued negotiations.

**Background Information:**

See above and the attached information.

ORDINANCE NO. 1872

INTRODUCED BY: \_\_\_\_\_  
\_\_\_\_\_

AN EMERGENCY ORDINANCE AMENDING THE FRANCHISE BETWEEN THE CITY OF COMMERCE CITY AND PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY TO EXTEND THE TERM OF THE FRANCHISE

WHEREAS, on May 9, 2011, the City Council passed Ordinance No. 1862, an emergency ordinance extending for four (4) months through September 13, 2011, the City’s franchise agreement (the “Franchise”) with Public Service Company of Colorado d/b/a Xcel Energy (“PSCo”);

WHEREAS, the City and PSCo have maintained negotiations for renewal of the Franchise, but continue to support divergent views as to key issues, including certain environmental matters that are the subject of a Colorado Public Utilities Commission proceeding as referenced in Ordinance No. 1862, which proceeding is ongoing, and consequently, the parties remain unable to reach agreement on the terms of renewal;

WHEREAS, both parties agree that their respective interests will be served by again amending the Franchise to extend its term;

WHEREAS, under this Emergency Ordinance, all terms of the current Franchise will remain unchanged with the exception of term; and

WHEREAS, City Council finds that the adoption of this ordinance is immediately necessary for the preservation of the health, safety, welfare and economic well-being of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

**SECTION 1.** The Amendment to the Franchise extending the term of the Franchise through December 13, 2011, attached hereto as Exhibit A (the “Extension Amendment”), is hereby approved.

**SECTION 2.** The Mayor and the City Clerk are hereby authorized and directed to sign and attest the Extension Amendment on behalf of the City of Commerce City.

**SECTION 3.** Except as specifically modified hereby, the Franchise shall remain in full force and effect.

**SECTION 4.** The City Council declares that passage of this ordinance as an emergency ordinance is immediately necessary for the preservation of the public health, safety, welfare and economic well-being of the City for the reasons set forth in this ordinance.

**SECTION 5.** Pursuant to City Charter Section 5.4, this Ordinance shall become effective upon its adoption by City Council.

INTRODUCED, PASSED AS AN EMERGENCY ORDINANCE AND PUBLIC NOTICE ORDERED THIS 12<sup>th</sup> DAY OF SEPTEMBER, 2011.

CITY OF COMMERCE CITY

---

Paul Natale, Mayor

ATTEST:

---

Laura J. Bauer, CMC, City Clerk