



**TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: May 27, 2014

**SUBJECT: INTRODUCE ORDINANCE NO. 14-4 AMENDING THE CONCORD MUNICIPAL CODE TITLE 3 (REVENUE AND FINANCE) ADDING CHAPTER 3.20 (FISCAL SUSTAINABILITY), ARTICLE I (USE OF ONE-TIME AND BUDGET SURPLUS FUNDS)**

### **Report in Brief**

Staff presented a report to the Policy Development & Internal Operations (PD&IO) Committee (Grayson & Leone) on February 10, 2014 seeking input from the Committee in developing a policy on how to use one-time and budget surplus fund—revenues that are non-reoccurring, that were unexpected or unanticipated and that were not included in the budget—to address the City’s long-term post-employment liabilities and infrastructure backlog. The intent of the February 10 meeting was to take the Committee’s recommendations to the full Council for consideration and adoption. The Committee supported development of an ordinance for the use of budget surplus and one-time funds, and requested staff to return to the Committee for review of the draft Ordinance. On April 14, 2014 staff returned to the PD&IO Committee with a draft Ordinance. The Committee accepted the draft Ordinance and requested that staff bring it forward to the City Council for consideration and approval (see Attachment 1).

### **Background**

On January 28, 2014 staff presented a report to the City Council which provided an *Update on the City’s Long-Term Post Employment Liabilities and Infrastructure Backlog*. The report identified the magnitude of the City’s unfunded post-employment liabilities and infrastructure backlog. At that meeting the Council directed staff to work with the Policy Development & Internal Operations (PD&IO) Committee (Councilmembers Grayson and Leone) to develop a policy on the use of one-time and budget surplus funds in a manner that supported addressing these very real city liabilities.

### **Discussion**

Staff presented a report during the February 10, 2014 PD & IO Committee meeting seeking input from the Committee in developing either a Council Policy or an Ordinance on how to use one-time and budget surplus funds (in other words, revenues that are non-reoccurring, unexpected or unanticipated and not included in the budget) to address the City’s long-term post-employment liabilities and infrastructure backlog.

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February 10, 2014 PD & IO Committee Feedback and Direction

The Committee supported development of an Ordinance for the use of budget surplus and one-time funds and requested that the draft Ordinance be brought back to the PD&IO Committee for review prior to presentation to the City Council. The Committee provided the following input to staff regarding the development of the draft Ordinance:

- Endorsed formalizing a policy defining how one-time and budget surplus funds are to be used
- Recommended using an Ordinance as the vehicle to implement this policy and requiring a 4/5 vote of the City Council for any changes to the adopted policy
- Definitions of one-time and budget surplus funds should be included
- The Policy should establish a process for recommendations to be brought to the full council for approval and should not include specific allocation percentages
- The categories of needs that should be included in the Ordinance (not in any priority) are:
  - Unfunded long-term post-employment liabilities (CCRS, Retiree Medical and PERS);
  - Infrastructure backlog including city facilities, roadways, signs, and parks;
  - Strengthening general fund reserves; and
  - Special or one-time priority projects.

In addition, the Committee members acknowledged that using an Ordinance to implement this policy with a 4/5 “super majority” voting requirement for any changes represents a strong statement by the Council that this is an important issue and a means to address the City’s unfunded needs. The Committee also concurred and agreed that the 4/5 voting requirement creates another hurdle to make exceptions to use one-time or budget surplus funds for purposes other than those detailed in the Ordinance. It was also noted that an Ordinance requiring a 4/5 vote for any changes also sends a strong, positive message to the bond rating agencies that the City is addressing its unfunded liabilities and unmet infrastructure needs.

The Committee requested the draft Ordinance be brought back to the PD&IO Committee prior to presentation to the City Council.

April 14, 2014 Committee Feedback and Direction

Staff presented a report during the April 14, 2014 PD & IO Committee meeting seeking input from the Committee. The report included an overview of the proposed ordinance on the use of one-time and budget surplus funds to address the City’s unfunded liabilities and infrastructure backlog. As requested during the February 10 Committee meeting by Chair Grayson, staff presented a summary of budget surplus funds for fiscal years 2004-05 through 2008-09 and a list of one-time funds for fiscal year 2012-13 (see below). Staff also pointed out that Measure Q revenue would not be subject to this ordinance as the use of Measure Q funds must be consistent with the intent of the ballot measure to protect and maintain City core services and to stabilize the City’s reserves.

Chair Grayson and Committee Member Leone both commented that staff did a good job in accurately incorporating the direction provided at the February 10 meeting. There were no questions or recommended

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changes to the ordinance presented. The Committee supported moving the draft Ordinance forward for presentation to the City Council.

Historical Net Budget Surplus (Deficit)

Below is a table of Net Budget Surplus (Deficit) for the five year period of fiscal years 2004-05 through 2008-09 that identifies the total general fund budget surplus (deficit) for each fiscal year. The net budget surplus (deficit) is made up of two components; (1) revenues exceeding/(below) budget, and (2) expenditure savings (deficit).

**General Fund - Schedule of Net Budget Surplus (Deficit)  
Fiscal Years 2004-05 through 2008-09**

<u>Fiscal Year</u>	(a) <b>Revenues Exceeding/(Below) Budget</b>	(b) <b>Expenditure S avings/(Deficit)</b>	= (a) + (b) <b>Net Budget Surplus/(Deficit)</b>
<b>2004-05</b>	\$6,152,783	\$795,983	\$6,948,766
<b>2005-06</b>	5,761,906	983,022	6,744,928
<b>2006-07</b>	4,652,553	1,342,498	5,995,051
<b>2007-08</b>	(262,779)	2,812,415	2,549,636
<b>2008-09</b>	(300,900)	(746,300)	<u>(1,047,200)</u>
		Average	<u>\$4,238,236</u>

History of One-Time Funds

A list of one-time funds for Fiscal Year 2012-13 is provided below. The Finance Department has not historically tracked one-time funds as a unique category. Therefore, although the Committee requested historical information on one-time funds over the last three years, staff can only easily provide information from the City's audited financial report for fiscal year 2012-13. If this Ordinance is approved by the Council, the Finance Department will establish procedures to identify and track one-time funds for the general fund. It should be noted that given the uniqueness of one-time funds, we would expect the list to change from year to year.

**One-Time funds for Fiscal Year 2012-13**

Refundable Deposit Recognition	\$553,639
Property Tax Admin Fee Reimbursement	877,490
Concord's Share of State Confiscated RDA Funds	987,294
	<u><u>\$2,418,423</u></u>

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Measure Q Revenues Not Subject to the Ordinance

Measure Q revenues are non-reoccurring and not on-going (Measure Q is a temporary tax measure scheduled to sunset in FY 2015-16). However, it should be noted that the Ordinance for Council's consideration on how to use one-time and budget surplus funds does not apply to Measure Q funds. The use of Measure Q funds must be consistent with the intent of the ballot measure to protect and maintain City core services and to stabilize the City's reserves. Since Measure Q was approved by the voters, the City has used a portion of the annual Measure Q revenues to fund operating expenses to preserve core services provided by the City to the community and has allocated the balance of the annual Measure Q revenues to rebuild financial reserves.

**Fiscal Impact**

Implementation of the Ordinance will strengthen the City's long-term fiscal strength and financial sustainability as one-time and budget surplus funds become available to pay down (reduce) the City's long-term liabilities, to fund infrastructure and other one-time or special needs.

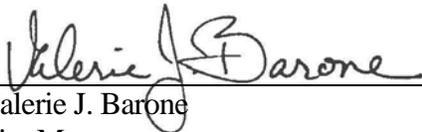
**Public Contact**

The agenda has been posted in accordance with the legal requirements and Notice of the public hearing was published in the Contra Costa Times newspaper.

**Recommendation for Action**

Staff is recommending that the City Council adopt an Ordinance (No. 14-4) amending Concord Municipal Code Title 3 (Revenue and Finance) adding Chapter 3.20 (Fiscal Sustainability), Article I (Use of One-Time and Budget Surplus Funds).

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**ORDINANCE NO. 14-4**

**AN ORDINANCE AMENDING CONCORD MUNICIPAL CODE TITLE 3 (REVENUE AND FINANCE) ADDING CHAPTER 3.20 (FISCAL SUSTAINABILITY), ARTICLE I (USE OF ONE-TIME AND BUDGET SURPLUS FUNDS)**

**THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:**

**Section 1.** Concord Municipal Code Title 3 (Revenue and Finance) is hereby amended by adding Chapter 3.20, entitled *Fiscal Sustainability*, Article I, entitled *Use of One-Time and Budget Surplus Funds*, as follows:

**Section 2.** Adding Section 3.20.010, entitled *Purpose and Definitions*, to read:

A. The purpose of this chapter is twofold: First, to assure that one-time revenues are used for non-recurring rather than ongoing expenditures, thereby ensuring that the City continues to employ sound fiscal strategies; and second, to define the uses for which the City shall employ such funds.

B. For purposes of this Chapter, the following terms shall have the following meanings:

1. “One-Time Funds” shall mean revenues that the City receives on a non-recurring basis (usually only received in one annual budget) and/or are unexpected, unanticipated and not included in the baseline revenue projections in the budget or amended budget. For example, such revenues may include, but are not limited to: unbudgeted unanticipated proceeds from the sale of surplus land, unanticipated unbudgeted one-time sales tax allocations associated with capital improvements from local businesses that were not included in the budget, and unbudgeted unanticipated grants, or the receipt of funds for unbudgeted, unanticipated retroactive (prior-year payments) taxes or fees, etc.

2. “Budget Surplus Funds” are those funds that result after closing the City’s accounting records for the fiscal year and completion of the annual audit, when total General Fund annual revenues recognized during the fiscal year exceed total actual expenditures for that year, thus adding to the City’s fund balance at the end of the fiscal year.

3. “Infrastructure Backlog” shall mean the cost of capital and maintenance expenditures required to bring the City’s public assets (such as parks, buildings, roads, signs, etc.) up to an acceptable standard, where such expenditures have not been funded or programed by the City.

1           4       “Post-Employment Benefits” shall mean, for purposes of this Ordinance: (1) the City’s  
2 retiree medical program, (2) the City of Concord Retirement System (CCRS) (a closed pension system  
3 that was established by the City prior to joining Cal PERS), and (3) Cal PERS, the City’s current  
4 pension program.

5           5.       “Unfunded Post-Employment Benefit Liabilities” shall mean that portion of the City’s  
6 post-employment benefits that have not been fully funded.

7           6.       “Annual Recommended Contributions (ARC)” shall mean the annual amount of funds  
8 an actuary recommends that the City deposit and set aside in a post-employment benefit plan to fully  
9 fund post-employment benefits over time, as determined by an actuarial study.

10          7.       “General Fund” shall mean the fund that is established by the City into which all sums  
11 of money collected by the City are deposited and expended for general government purposes, unless  
12 otherwise provided by ordinance, resolution or legal mandate directing the deposit into a specific fund  
13 other than the General Fund.

14          8.       “General Fund Reserves” shall mean the reserves established pursuant to the City  
15 Council adopted Policy & Procedure Number 129 (PP129) in 1995, which was amended in 2009 (and  
16 may be amended from time-to-time), that establishes thresholds on levels of General Fund Reserves.  
17 Each year at the time the City budget is considered, the City Council reviews the estimated reserve  
18 levels for consistency with PP129. An aggregate reserve, consisting of operating contingency and  
19 other General Fund reserves is established and maintained at levels determined by the City Council.

20          **Section 3.** Adding Section 3.20.020, entitled *Use of One-Time and Budget Surplus Funds*, to  
21 read:

22          A.       From time to time, the City Manager shall recommend allocations to the City Council  
23 on the use of one-time and budget surplus funds consistent with the uses identified in this ordinance.

24          B.       One-time funds are for one-time expenditures; therefore, the City shall not use one-  
25 time and budget surplus funds in a way that creates new on-going expenditure requirements unless it  
26 can be demonstrated that adequate resources exist to support the on-going expenditure requirements.

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1 C. One-time and budget surplus funds identified throughout each budget cycle shall only  
2 be used to fund the following City needs, as directed by the City Council, at a public meeting. The  
3 City Council retains the discretion of how to allocate these funds between the five categories listed  
4 below:

- 5 1) The annual required contributions for the City of Concord Retirement System  
6 (CCRS) and Retiree medical benefits, as determined by an actuarial study, to the extent these  
7 are not fully funded in the operating budget;
- 8 2) The City's infrastructure backlog including city facilities, roadways, signs, and  
9 parks;
- 10 3) The City's outstanding liabilities for unfunded post-employment benefits;
- 11 4) Special or one-time, non-recurring expenditure needs of the City;
- 12 5) Strengthening the City's General Fund Reserves;

13  
14 **Section 4.** Adding Section 3.20.030, entitled *Super Majority Council Action Required to*  
15 *Vary From This Chapter*, to read:

16 Any use of one-time or budget surplus funds that varies from the direction provided in this  
17 Chapter shall require adoption of a City Council resolution by at least four members of the City  
18 Council. The Council resolution shall include a statement of findings supporting the appropriation of  
19 one-time or budget surplus funds in a manner that departs from the requirements of this Chapter.

20 **Section 5.** This Ordinance No. 14-4 shall become effective thirty (30) days following its  
21 passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire  
22 Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City  
23 Clerk at least five (5) days prior to its adoption and within fifteen (15) days after its adoption,  
24 including the vote of the Councilmembers. Additionally, a summary prepared by the City Attorney's  
25 Office shall be published once at least five (5) days prior to the date of adoption of this Ordinance and  
26 once within fifteen (15) days after its passage and adoption, including the vote of the  
27 Councilmembers, in the Contra Costa Times, a newspaper of general circulation in the City of  
28 Concord.

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Timothy S. Grayson  
Mayor

ATTEST:

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Mary Rae Lehman, CMC  
City Clerk

(Seal)

Ordinance No. 14-4 was duly and regularly introduced at a regular meeting of the City Council of the City of Concord held on May 27, 2014, and was thereafter duly and regularly passed and adopted at a regular meeting of the City Council of the City of Concord on June 10, 2014 by the following vote:

- AYES:** Councilmembers -
- NOES:** Councilmembers -
- ABSTAIN:** Councilmembers -
- ABSENT:** Councilmembers -

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

\_\_\_\_\_  
Mary Rae Lehman, CMC  
City Clerk