

RESOLUTION NO. 2023-070

A RESOLUTION DESCRIBING A PROPOSAL TO EXTEND AN EXISTING 0.185% COUNTYWIDE SALES AND USE TAX FOR FIFTEEN YEARS FOR THE PURPOSES OF FUNDING AFFORDABLE AND ATTAINABLE HOUSING AND RELATED SUPPORT SERVICES WITHIN BOULDER COUNTY; AND A VOTER-APPROVED REVENUE CHANGE

Recitals

A. Article 2, Title 29, Colorado Revised Statutes, as amended (hereinafter the “Article”), provides for the imposition of a countywide sales and use tax upon approval of a majority of the registered electors of the County voting on such question.

B. On November 6, 2018, the voters of Boulder County approved an extension of an existing 0.185% countywide sales and use tax for construction of an alternative sentencing facility at the Boulder County Jail, expanding alternative sentencing and offender management programs and inmate services, and other jail modernization projects, as described in Resolution No. 2018-76, adopted August 14, 2018.

C. Resolution 2018-76 required that the net revenues of the 0.185% countywide sales and use tax for the period January 1, 2020 - December 31, 2024 be expended for the purpose of funding construction of an alternative sentencing facility adjacent to the Boulder County Jail, expanding alternative sentencing and offender management programs and services for inmates, and other jail modernization projects that allow the County to address pressing public safety needs.

D. The Board desires to refer to the registered electors of the County of Boulder, State of Colorado, to be determined by a majority voting on the measure, a fifteen-year extension of the existing 0.185% countywide sales and use tax that is set to expire on December 31, 2024, to be expended for the purpose of funding affordable and attainable housing and related support services within Boulder County.

E. No increase in the current tax rate is required to fund this extension.

F. The availability of quality affordable for-sale and rental housing is a vital component of a thriving community, including its families, seniors, veterans, individuals with disabilities, and individuals at risk of or experiencing homelessness, and is crucial to its health, environment and overall well-being.

G. A tremendous and escalating need exists throughout Boulder County for affordable for-sale and rental housing, which continues to outpace any increase in availability. Because of the high cost of land and construction and other market forces, the need for affordable housing cannot be satisfied without subsidies.

H. Because the existing resources and revenue that are available to meaningfully address

Boulder County's housing and related needs are considerably insufficient, the Board has determined that a dedicated and reliable source of funding is essential.

I. Boulder County is a local government and political subdivision of the State of Colorado, distinct and independent from housing authorities established under Title 29, Article 4, Parts 4 or 5 of the Colorado Revised Statutes.

J. Proposing to extend the 0.185% countywide sales and use tax, with revenues from the extended period expended according to the purposes stated in this Resolution, is a cost-effective method of obtaining additional revenues without an increase in the total cumulative countywide sales and use tax rate.

K. If such extension is approved, revenues collected from the imposition of the 0.185% countywide sales and use tax would be expended for the purposes stated in Resolution No. 2018-76 through December 31, 2024, and then, beginning on January 1, 2025, revenues collected from the imposition of the 0.185% countywide sales and use tax would be expended for the purposes stated in this Resolution.

L. The Board finds that the extension of the existing countywide sales and use tax in the existing amount of 0.185% for fifteen (15) years from the current expiration date of December 31, 2024, with proceeds of such extension to be used for affordable housing purposes according to the provisions of this Resolution, and the exemption of such tax revenues and the interest on the revenues from the fiscal year spending limitations of article X, section 20 of the Colorado Constitution, would permit the use of these additional revenues to further accomplish Boulder County's affordable housing goals.

M. The Board of County Commissioners intends that, should the proposal to extend the existing countywide 0.185% sales and use tax and obtain a voter-approved revenue change for such tax and earnings proceeds not be approved by the electorate in November, the existing tax and existing voter-approved revenue change shall not be affected by such failed amendment and shall continue in full force and effect as if this Resolution had not been adopted.

N. Article X, section 20 of the Colorado Constitution provides for the submission of such a sales and use tax proposal to the registered electors of the County at an election called by resolution of the Board of County Commissioners; and Section 104 (3) of the Article provides that if no general election is scheduled within 120 days after adoption of such resolution, the Board of County Commissioners shall submit the sales and use tax proposal to the registered electors at a special election, and therefore it is appropriate to refer this proposal to the odd-year election to be held on November 7, 2023, as required by Colo. Const., art. X, section 20(3)(a).

O. The Article provides that the County Clerk and Recorder shall publish the text of such tax proposal four separate times, a week apart, in the official newspaper of the County and of each city and incorporated town within the County.

P. Colo. Const., art. X, section 20(3)(b), requires certain election notices to be mailed to all registered voters of the County.

Q. The Article provides that the proposal shall contain certain provisions concerning the amount, levying and scope of said tax.

NOW, THEREFORE, BE IT RESOLVED THAT: the existing countywide 0.185% sales and use tax and revenue change proposal as originally stated in Resolution No. 2018-76 shall be amended as set forth below and the following proposal shall be referred to the registered electors of the County at the general election to be held on Tuesday, November 7, 2023:

1.(a) The imposition, by extension, and collection of a countywide 0.185% (18.5 hundredths of one percent) sales and use tax according to the provisions of the Article upon the sale at retail of tangible personal property and the furnishing of certain services in the County as provided in paragraph (d) of Subsection (1) of Section 29-2-105, Colorado Revised Statutes (“C.R.S.”), as amended, and as is more fully set forth below.

(b) For the purpose of this sales tax, all retail sales are consummated at the retailer’s place of business unless the tangible personal property sold is delivered by the retailer or his agent outside the County’s limits. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by article 26, title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the County, the place at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of article 26, title 39, C.R.S., and by rules and regulations promulgated by the Colorado Department of Revenue. Without limiting the broad application of this sales tax and recognizing that mobile telecommunications services are subject to particular legal requirements, this sales tax shall apply to mobile telecommunications services to the greatest extent permitted under Section 29-2-105(1.5), C.R.S.

(c) The amount subject to tax shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S., as amended.

(d) The sales of tangible personal property and services taxable under this sales tax shall be the same as the sales of tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., as amended, except as otherwise provided herein. There shall be exempt from taxation under the provisions of this proposed countywide sales and use tax extension, the tangible personal property and services which are exempt under the provisions specified in part 7 of article 26 of title 39, C.R.S., as amended, except that only those local exemptions identified in Section 29-2-105(d)(I), C.R.S., listed below in (1) through (4), and when legally recognized, the local exemptions listed below in (5) through (7) shall apply to this County sales and use tax. The following exemptions are consistent with exemptions contained in various existing Boulder County sales and use tax resolutions:

- (1) The exemption for sales of machinery or machine tools specified in Section 39-26-709(1), C.R.S.
- (2) The exemption for sales of food specified in Section 39-26-707(1)(e), C.R.S. For the purposes of this subsection, “food” is defined in Section 39-26-102(4.5), C.R.S.
- (3) The exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source

specified in Section 39-26-724, C.R.S.

- (4) The exemption for sales of electricity, coal, wood, gas, fuel, oil, or coke specified in Section 39-26-715(1)(a)(II), C.R.S.
- (5) The exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles specified in Section 39-26-723, C.R.S.
- (6) The exemption for sales that benefit a Colorado school specified in Section 39-26-725, C.R.S.
- (7) The exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization specified in Section 39-26-718(1)(c), C.R.S.

(e) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax imposed by the County when such sales meet both of the following conditions:

- (1) The purchaser is a non-resident of or has his principal place of business outside of the County; and
- (2) Such personal property is registered or required to be registered outside the limits of the County under the laws of the State of Colorado.

(f) The countywide sales tax shall not apply to the sale of “construction and building materials,” as the term is used in Section 29-2-109, C.R.S., as amended, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the County evidencing that a local use tax has been paid or is required to be paid.

(g) The countywide sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed by the County. A credit shall be granted against the sales tax imposed by the County with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed by the County.

(h) Notwithstanding any other provision of this sales tax regarding the taxation of food, this sales tax shall not apply to the following:

- (1) Sales of food purchased with food stamps. For the purposes of this subsection (a), “food” has the same meaning as provided in 7 U.S.C. § 2012, as currently in effect and subsequently amended.
- (2) Sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. § 1786. For the purposes of this subsection (b), “food” has the same meaning as provided in 42 U.S.C. § 1786, as currently in effect and subsequently amended.

(i) This sales tax shall not apply to the sales of cigarettes.

(j) This sales tax shall not apply to sales to a telecommunications provider of equipment

used directly in the provision of telephone service, cable television service, broadband communications service, or mobile telecommunications service. It is the policy of this County that this exemption be applied in a uniform and nondiscriminatory manner to the telecommunications providers of telephone service, cable television service, broadband communications service, and mobile telecommunications service.

(k) All terms used in this ordinance shall have the same meaning as provided for in Section 39-26-102, C.R.S. Unless otherwise provided in this sales tax, any amendments thereto, or article 2, title 29, C.R.S., the provisions of article 26, title 39, C.R.S., shall govern the collection, administration, and enforcement of this sales tax.

2. The imposition, by extension, of a countywide 0.185% (18.5 hundredths of one percent) sales and use tax is extended and imposed according to the provisions of the Article for the privilege of using or consuming in the County any construction and building materials purchased at retail and for storing, using, or consuming in the County any motor and other vehicles on which registration is required, purchased at retail. Subject to the provisions of Section 39-26-212, C.R.S., as amended, the use tax shall not extend or apply:

(a) To the storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the County;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the County either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(c) To the storage, use, or consumption of tangible personal property brought into the County by a non-resident thereof for his own storage, use, or consumption while temporarily within the County; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this State by a non-resident to be used in the conduct of a business in this State;

(d) To the storage, use, or consumption of tangible personal property by the United States government or the State of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(e) To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof;

(f) To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by the County. A credit shall be granted against the use tax imposed by the County with respect to a person's storage, use, or

consumption in the County of tangible personal property purchased in another statutory or home rule county. The amount of the credit shall be equal to the tax paid by the person by reason of the imposition of a sales or use tax of the other statutory or home rule county on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this resolution;

(g) To the storage, use, or consumption of tangible personal property and household effects acquired outside of the County and brought into it by a nonresident acquiring residency;

(h) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the County and purchased the vehicle outside of the County for use outside of the County and actually so used it for a substantial and primary purpose for which it was acquired and registered, titled, and licensed said motor vehicle outside of the County;

(i) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to November 6, 2001;

(j) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into any time prior to November 6, 2001.

3. The 0.185% use tax shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and no registration shall be made for any motor vehicle by the Department of Revenue or its authorized agents until any tax due upon the use, storage, or consumption thereof pursuant to this resolution has been paid.

4. The definition of words contained herein is the same as those words are defined in Section 39-26-102, C.R.S., as amended, and those definitions are incorporated in this Resolution.

5. Except as provided by Section 39-26-208, C.R.S., as amended, any use tax imposed shall be collected, enforced and administered by the County. The use tax on construction and building materials will be collected by the County building inspector or as may be otherwise provided by intergovernmental agreement, based upon an accurate estimate of building and construction materials costs submitted by the owner or contractor at the time a building permit application is made.

6. If the majority of the registered electors voting thereon vote for approval of this 0.185% countywide sales and use tax extension proposal, such 0.185% countywide sales and use tax shall be in effect throughout the incorporated and unincorporated portions of the County for fifteen (15) years, unless and until repealed or otherwise revised by a vote of the citizens of Boulder County.

7. If the majority of registered electors voting thereon vote for approval of this countywide sales and use tax extension proposal, revenues collected from the imposition of said 0.185% countywide sales and use tax would be expended for the purposes and in accordance with the limitations of this Resolution.

8. The cost of the election shall be paid from the general fund of the County.

9. The County Clerk and Recorder shall publish the text of this sales and use tax proposal four separate times, a week apart, in the official newspaper of the County and each city and incorporated town within this County.

10. The County Clerk and Recorder, as election officer, shall undertake all measures necessary to comply with the election provisions set forth in Colo. Const., art. X, section 20(3), including but not limited to the mailing of required election notices and ballot issue summaries.

11. The conduct of the election shall conform so far as is practicable to the general election laws of the State of Colorado.

12. Beginning January 1, 2025, the net proceeds from the 0.185% countywide sales and use tax received by the County shall be expended by the County for the purposes of funding affordable and attainable housing and related support services, including but not limited to:

(a) the costs of development, operation, acquisition, preservation, renovation, maintenance and construction of for-sale and rental homes for low and moderate income households and local workforce;

(b) services that support housing stability;

(c) grants to housing authorities (such as Boulder County Housing Authority, Longmont Housing Authority and Boulder Housing Partners) and nonprofit affordable housing organizations.

13. Any revenue generated from activities on housing properties funded by this sales and use tax may be used for the same purposes identified in this Resolution.

14. If the proposal to extend the existing countywide 0.185% sales and use tax and obtain a voter-approved revenue change for such tax and earnings proceeds is not approved by the electorate in November, the existing tax and existing voter-approved revenue change shall not in any way be affected by such failed amendment and shall continue in full force and effect as if this Resolution had not been adopted.

15. Monies from the extended sales and use tax will be appropriated annually as determined by the Board in its sole discretion and in accordance with the terms of this Resolution.

16. Interest generated from the revenues of the sales and use tax shall be used for the purposes set forth in this Resolution.

17. For purposes of Colo. Const., art. X, section 20, the receipt and expenditure of revenues of the sales and use tax together with earnings on the investment of the proceeds of the tax shall constitute a voter-approved revenue change.

18. The existing countywide total sales and use tax rate of 1.185%, a portion of which would be extended under this proposal, when added to existing state and municipal sales and use tax rates which are non-exempt under the provisions of Section 29-2-108, C.R.S., as amended, and cumulated with the contemporary extended open space tax results in a total sales and use tax rate in excess of the 6.9 percent limit stated in said statute as follows: Boulder: 9.045%; Boulder (retail food service): 9.195%; Erie: 8.685%; Lafayette: 9.055%; Longmont: 8.715%; Louisville: 8.835%; Lyons: 8.685%; Nederland: 9.435%; Superior: 8.645%; Ward: 7.185%.

19. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this resolution which can be given effect without the invalid provision or applications and to this end, the provisions of this resolution are declared to be severable.

20. The proposal as described in this Resolution shall take effect immediately upon the approval of the electorate.

21. The sales and use tax described in this Resolution expires on December 31, 2039.

22. A notice of the adoption of this countywide sales and use tax addition proposal by a majority of the registered electors voting thereon shall be submitted by the County Clerk and Recorder to the Executive Director of the Department of Revenue, together with a certified copy of this Resolution, at least 45 days prior to the effective date of the sales and use tax created herein.

23. The Board of County Commissioners of Boulder County shall take action to set a ballot title for this issue.

IT IS HEREBY DECLARED by the Board of County Commissioners of the County of Boulder and State of Colorado that this resolution is necessary for the immediate preservation of the public health, safety and welfare, and that it shall become effective immediately upon its adoption.

[Signature Page to Follow]

A motion to approve this Resolution 2023-070 was made by Commissioner _____, seconded by Commissioner _____, and passed by a _____ vote.

ADOPTED this 17th day of August, 2023.

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:

Claire Levy, Chair

Ashley Stolzmann, Vice Chair

Marta Loachamin, Commissioner

ATTEST:

Clerk to the Board: _____