

## RESOLUTION 2018-76

**A Resolution of the Board of County Commissioners of Boulder County describing a proposal to extend an existing 0.185% countywide sales and use tax; providing for the use of proceeds of such extended tax to be repurposed 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; a voter-approved revenue change; and other matters related thereto.**

### 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 Boulder County, Colorado (the "County") voting on such question.

B. On August 12, 2014, the Board of County Commissioners (the "Board") adopted Resolution No. 2014-66, proposing and placing on the 2014 general election ballot the approval of a 0.185% countywide sales and use tax to fund flood recovery following the September 2013 major flood event.

C. The voters of Boulder County approved the flood recovery sales and use tax proposal described in Resolution No. 2014-66 for a period of five (5) years through December 31, 2019, and, since January 1, 2015, the revenues from the sales and use tax have been collected and expended, and will continue to be collected and expended through December 21, 2019, in accordance with the terms of that Resolution for the purpose of repairing and reconstructing flood-damaged roads and infrastructure, stream channel restoration, assisting residents and businesses affected by the flood to rebuild, and other flood recovery measures.

D. Considering the flood recovery accomplishments completed with the proceeds of the existing 0.185% sales and use tax, and in light of its sunset on December 31, 2019, the Board desires to propose to voters for their approval the extension of the existing 0.185% countywide sales and use tax, at the same rate and for an additional five (5) years up to and including December 31, 2024, along with a proposal to repurpose the use of such sales and use tax proceeds to fund needed improvements to facilities and programs at the Boulder County Jail.

E. The Boulder County Jail is more than thirty years old and in need of maintenance and improvements to more safely house the current inmate population, which includes housing a greater number of female inmates and inmates with greater mental and physical health needs.

F. The current jail configuration is based on outdated design and supervision practices, and is inadequate to address program, infrastructure and security concerns. Existing facilities do not allow for programming that would result in better outcomes for both offenders and the community. A lack of space in the current jail inhibits the ability of staff to adequately perform jail duties, including intake, classification and discharge. The current jail configuration does not allow for officers to employ best management practices.

G. The two halfway house facilities currently utilized by Boulder County to house individuals sentenced to community corrections are inadequate to provide comprehensive programming and are in need of extensive repair and renovation. Renovation of these two facilities cannot meet the current alternative sentencing needs and would not be a cost-effective way to provide necessary sentence options.

H. Overall, both in the current jail and halfway houses, there is a lack of space for programming, including mental and physical health services, while the population of inmates needing those services is growing. There is limited ability to provide different types of sentencing options, such that the County is unable to accommodate work release and other alternative sentencing programs that foster community member productivity. Continuing to accommodate work release within existing jail facilities increases the opportunity for contraband to be brought into the jail.

I. Extending the existing 0.185% sales and use tax for an additional five (5) years and repurposing the proceeds of such tax, approximately \$10 million in annual revenue, for the new 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 will allow the County to address pressing public safety needs.

J. Construction of a new comprehensive alternative sentencing facility will serve to ease jail crowding by providing appropriate housing for different inmate populations, create opportunity to reduce security risks and provide better programming for inmates, in a cost effective manner and without increasing the size of the current jail.

K. Consolidation of alternative sentencing and offender management programs into a single new alternative sentencing facility will also provide more flexibility in programs and staffing, which will allow for more opportunity to fit the offender with the best programming for their needs, keeping low-risk offenders out of expensive jail beds. In addition, a dedicated alternative sentencing facility more easily supports timely completion of court ordered sentences in a way that maintains the individual's employment and family ties, preserving the individual's contribution to the community.

L. Once low risk offenders can be housed in an alternative sentencing facility, the current jail building can be modernized to allow jail staff to more safely and

better manage the population of inmates who need to be in a secure facility through better classification and oversight.

M. The renovation and reconfiguration of the existing jail building will also create needed space for increased provision of important mental and physical health services to meet the needs of inmates, and to provide adequate space to deal with the increase in the number of female inmates needing to be housed in secure jail beds.

N. The Board finds that extending the existing countywide sales and use tax expiring December 31, 2019, at the existing rate of 0.185%, for an additional period of five (5) years to and including December 31, 2024, with proceeds of such extension to be utilized for funding construction of an alternative sentencing facility at the Boulder County Jail, expanding alternative sentencing and offender management programs and services for inmates, and jail modernization projects in accordance with the provisions of this Resolution, and the exemption of such tax revenues and the interest earned thereon from fiscal year spending limitations of Colo. Const., Art. X, Section 20,, would permit these additional revenues to be utilized to further meet the needs of the Boulder County Jail.

O. Due to the revenue limitations contained in Colo. Const., Art. X, Section 20, even where the voters of the County have approved such a sales and use tax, the uneven flow of revenues of such taxes and the earnings from such tax revenues from year to year could cause significant problems in the funding and provision of County programs and services in any future year; therefore, it is necessary to obtain a voter-approved revenue change.

P. The Board desires to refer to the registered electors of the County at the election to be held November 6, 2018, to be determined by a majority voting thereon, the question of whether such taxes and voter-approved revenue change shall be approved or disapproved.

Q. The Article provides for the submission of such a countywide sales and use tax proposal to the registered electors of the County at a general election scheduled within 120 days after adoption of such resolution.

R. 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.

S. Colo. Const., Art. X, Section 20(3)(b), requires certain election notices to be mailed to all registered voters of the County.

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

U. If such extension is approved by the voters, revenues collected from the imposition of the 0.185% countywide sales and use tax up to and including December 31, 2019 would continue to be expended for the purposes and in accordance with the limitations of Resolution No. 2014-66, and Resolution 2014-66 would be superseded by this Resolution effective for revenues collected from the imposition of the extended 0.185% countywide sales and use tax on and after January 1, 2020.

V. Should the proposal to extend the existing countywide sales and use tax at a rate of 0.185% and obtain a voter-approved revenue change for such tax not be approved by the electorate in November, the existing tax, multiple fiscal year revenue commitment authorization, and existing voter-approved revenue change, shall not in any way be affected by such failed amendment and shall continue in force and effect as if this Resolution had not been adopted.

Therefore, the Board resolves:

There shall be referred to the registered electors of the County at the general election to be held on Tuesday, November 6, 2018, the following proposal:

1. (a) The imposition, by extension, of a countywide 18.5 hundredths of one percent (0.185%) sales tax in accordance with 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 hereinafter set forth.

(b) 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.

(c) The gross receipts from sales shall include delivery charges when such charges are subject to the State Sales and Use Tax imposed by Article 26 of Title 39, C.R.S., as amended, regardless of the place to which delivery is made.

(d) The countywide sales tax proposed to be extended hereby 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.

(e) The countywide sales tax extension proposed hereby shall not apply to the sale of food purchased with food stamps. For the purposes of this paragraph, "food" shall have the meaning as provided in 7 U.S.C., Section 2012(g), as amended.

(f) The countywide sales tax extension proposed hereby shall not apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C., Section 1786. For the purposes of

this paragraph, "food" shall have the meaning as provided in 42 U.S.C., Section 1786, as amended.

(g) The countywide sales tax extension proposed hereby 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 contained herein, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city, or county shall be exempt from the town, city or county sales tax if the materials are delivered by the retailer or his agent to a site within the limits of such town, city or county.

(i) The sale of tangible personal property and services taxable pursuant this proposal shall be the same as the sale of tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., except as otherwise provided herein. There shall be exempt from taxation under the provisions of this proposed countywide sales 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 County sales and use tax resolutions:

- (1) For sales of machinery or machine tools specified in Section 39-26-709(1), C.R.S.
- (2) For sales of food, as defined in Section 39-26-102(4.5), C.R.S., specified in Section 39-26-707(1)(e), C.R.S.
- (3) 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) For sales of electricity, coal, wood, gas, fuel oil, or coke specified in Section 39-26-715(1)(a)(II), C.R.S.

- (5) For sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as specified in Section 39-26-723, C.R.S.
- (6) For sales that benefit a Colorado school specified in Section 39-26-725, C.R.S.
- (7) For sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in Section 39-26-718(1)(c), C.R.S.

(j) All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from this sales tax extension 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 tangible personal property is registered or required to be registered outside the limits of the County under the laws of the State of Colorado.

(k) For the purposes of this sales tax extension proposal, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the County or to a common carrier for delivery to a destination outside the limits of the County.

(l) In the event a retailer has no permanent place of business in the County or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of a sales tax imposed by this proposal shall be determined by the provisions of Article 26 of Title 39, C.R.S., as amended, and by rules and regulations promulgated by the Colorado Department of Revenue.

(m) The countywide sales tax extension proposed hereby shall be collected, administered and enforced by the Executive Director of the Colorado Department of Revenue in the same manner as the collection, administration, and enforcement of the Colorado State Sales Tax, as provided by Articles 26 and 21 of Title 39 and Article 2 of Title 29, C.R.S., as amended; provided that the County shall be authorized to enter into an intergovernmental agreement with said Executive Director pursuant to Section 39-26-122.5, C.R.S., as amended, to enhance systemic efficiencies in the collection of such taxes.

2. The imposition, by extension, of a countywide 18.5 hundredths of one percent (0.185%) use tax in accordance with 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 of the owner who 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 8, 1994, or, where applicable to such storage, use or consumption, after December 31, 2019, pursuant to a written contract for the purchase thereof entered into prior to January 1, 2020;

(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 8, 1994, or, where applicable to such storage, use or consumption after December 31, 2019, pursuant to a construction contract bid, let, or entered into prior to January 1, 2020.

3. The 0.185% use tax provided for herein 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 herein contained shall be as said words are defined in Section 39-26-102, C.R.S., as amended, and said definitions are incorporated herein.

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 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 countywide sales and use tax extension, such 0.185% countywide sales and use tax will continue to be in effect throughout the incorporated and unincorporated portions of the County up to and including December 31, 2024.

7. If such extension is approved by the voters, revenues collected from the imposition of the existing 0.185% countywide sales and use tax up to and including December 31, 2019 would continue to be expended for the purposes and in accordance with the limitations of Resolution No. 2014-66, and Resolution 2014-66 would be superseded by this Resolution effective for revenues collected from the imposition of the extended 0.185% countywide sales and use tax on and after January 1, 2020.

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

11. All of the net proceeds from the extended 0.185% countywide sales and use tax proposed hereby that are received by the County from collections during the period authorized hereby shall be expended by the County for the purpose of funding construction of an alternative sentencing facility at the Boulder County Jail, expanding alternative sentencing and offender management programs and services for inmates, and jail modernization projects, including but not limited to:

(a) construction of a comprehensive alternative sentencing facility outside of the current jail to ease jail crowding, reduce security risks, and provide better alternative sentencing and offender management programming for inmates;

(b) programs and services that utilize this new alternative sentencing facility building for inmates participating in alternative sentencing programs, like work-release and day reporting, to expand the ability to provide the full array of options to support the timely completion of court ordered sentences, as well as programs and services that may utilize additional capacity of the new facility to respond to evolving needs of the inmate population or larger community, such as provision of transitional short-term homeless beds;

(c) improvements and renovations to the existing jail building to more safely house inmates, including female inmates and inmates with mental and physical health issues;

(d) reconfiguring space within the jail to properly process inmates in and out of the facility and to add needed administrative space;

(e) modernization of the current jail facility to allow jail staff to better and more safely manage the population of inmates who need to be in a secure facility through better classification and oversight;

(f) renovation of existing jail facilities to provide space for additional programming and services to provide for mental and physical health needs of inmates.

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

13. For purposes of Colo. Const., Art. X, Section 20, ("TABOR"), the receipt and expenditure of revenues of the extended 0.185% countywide sales and use tax proposed hereby together with earnings on the investment of the proceeds of such tax shall constitute a voter-approved revenue change.

14. The sales and use tax shall expire at 12:00 a.m. on January 1, 2025, and any monies remaining after January 1, 2025 may continue to be expended solely for the purposes set forth herein until completely exhausted.

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

16. A notice of the approval of this countywide sales and use tax proposal by a majority of the registered electors voting thereon shall forthwith 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, no later than November 17, 2018.

17. The election shall be conducted on November 6, 2018 as a coordinated election in accordance with Articles 1 to 13 of Title 1, C.R.S. (the "Uniform Election Code").

18. The Board shall take further action by resolution to set a ballot title for the proposal described herein. For purposes of Section 1-11-203.5, C.R.S., as amended, such resolution shall serve to set the ballot title for such proposal.

19. No later than September 7, 2018, the Designated Election Official shall certify the order of the ballot and ballot content to the Clerk and Recorder of the County (the "County Clerk"). The "Designated Election Official" shall be Michelle Krezek, Intergovernmental Relations Director and Administrative Deputy to the Board.

20. The Designated Election Official is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and comply with the Uniform Election Code, TABOR, and other applicable laws; provided that all acts required or permitted by the Uniform Election Code relevant to voting by early voters' ballots, absentee ballots, and emergency absentee ballots which are to be performed by the Designated Election Official shall be performed by the County Clerk. The election shall be conducted in accordance with the Uniform Election Code, TABOR, and all other applicable laws.

21. No later than September 25, 2018, the Designated Election Official shall submit to the County Clerk, in the form, if any, specified by the County Clerk, the notice of election required by Subsection (3)(b) of TABOR.

22. The Designated Election Official, the County Clerk and other County officials and employees are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

23. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Board and the officers and employees of the County and directed toward holding the election for the purposes stated herein are hereby ratified, approved, and confirmed.

24. All prior acts, orders or resolutions, or parts thereof, by the County in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

25. 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 application, and to this end the provisions of this Resolution are declared to be severable.

A motion to this effect was made by Commissioner Jones, seconded by Commissioner Gardner, and passed by a 3-0 vote.

*[Signature page follows]*

ADOPTED on this 14<sup>th</sup> day of August, 2018.

**BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:**

Cindy Domenico

Cindy Domenico, Chair

Elise Jones

Elise Jones, Vice Chair

Deb Gardner

Deb Gardner, Commissioner



ATTEST:

Cecilia S. Lacey

Clerk to the Board