

RESOLUTION NO. 2022-050

A RESOLUTION DESCRIBING A PROPOSAL TO IMPOSE AN ADDITIONAL COUNTYWIDE SALES AND USE TAX OF 0.10% FOR THE PURPOSE OF FUNDING WILDFIRE MITIGATION EFFORTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: STRATEGIC FOREST AND GRASSLAND MANAGEMENT PROJECTS TO REDUCE THE RISK OF CATASTROPHIC WILDFIRE, PROTECT DRINKING WATER AND WATER SUPPLIES, AND FOSTER RESILIENT ECOSYSTEMS; COMMUNITY PARTNERSHIPS AND PROGRAMS TO HELP RESIDENTS PREPARE FOR WILDFIRES, CREATE DEFENSIBLE SPACE AROUND HOMES, MAKE HOMES MORE FIRE RESISTANT, AND PROVIDE TECHNICAL ASSISTANCE AND REBATES TO HOMEOWNERS; FIRE MITIGATION STAFFING; AND OTHER PROJECTS TO PROACTIVELY ADDRESS THE INCREASING RISK OF CLIMATE-DRIVEN WILDFIRES; AND A VOTER APPROVED REVENUE CHANGE

RECITALS

A. On December 30, 2021, the Marshall Fire destroyed 1,087 homes in the City of Louisville, the Town of Superior, and within areas of Boulder County resulting in the costliest federally-declared wildfire disaster in Colorado history. The Marshall Fire is a stark example of how wildfires have increased dramatically in intensity and frequency in Boulder County. They now burn at unprecedented scale and frequency with record setting destruction. Additionally, the threats and impacts from these more intense wildfires have expanded beyond the foothills and mountains, and now also threaten our communities in the eastern plains of Boulder County. 2020 saw the three largest wildfires in the state's history, which produced an almost unimaginable amount of damage to the region. These fires included the Cameron Peak fire, the East Troublesome fire, and the Pine Gulch fire. Boulder County's largest fire, the Calwood fire, burned over 10,000 acres in 2020.

B. Climate change has been a key factor in increasing the risk and extent of wildfires in the Western United States. Research shows that changes in climate create warmer, drier conditions. Increased drought, and a longer fire season are boosting these increases in wildfire risk. Boulder County and other Colorado communities are experiencing the impacts of a warming climate. Wildfires now burn twice as many acres each year compared to pre-1980 averages, and Colorado's precipitation decreased 20% in the last century. Less snow and earlier melting will leave Boulder County with less water during hotter summers and tinderbox conditions ripe for destructive, fast spreading wildfires. In the coming decades, these changing climactic conditions are likely to further decrease water availability and intensify wildfires in the wildland urban interface. Given these conditions, it is critical that Boulder County take a proactive approach to mitigate fire danger and safeguard water resources.

C. The threats posed by wildfire to Boulder County residents' lives, livelihoods, and property are caused by a host of factors, including unhealthy, fire-prone forests; climate change, which has led to increased temperatures and prolonged droughts that are drying out forest and grassland fuels; and increasing human populations of residents and recreationists in the Wildland Urban Interface. By implementing additional forest health mitigation and watershed health

efforts, Boulder County can accelerate the pace and scale of climate resilience work on strategically located projects. This work will serve to improve forest health, watershed protection and community resilience.

D. In Colorado, the number of people living in areas with wildfire risk increased by nearly 50 percent from 2012 to 2017 to approximately 2.9 million people—about half of the state’s total population. We have more and more people and homes in harm’s way when a fire ignites. Population growth can also result in more wildfire ignitions and more people recreating in the County increases the chances of human fire starts.

E. Fire suppression over the last 100 years has resulted in forests with vegetation densities 10 to 100 times their natural state. Healthy forests allow for a diverse array of benefits. They provide habitat for many wildlife species, improve water quality, filter pollutants from water and air, enhance outdoor recreational activities, provide wood products, and supply jobs that support local economies. Forest health mitigation can fulfill an important role in how we help shape Colorado’s future forests. Where lands allow for active adaptive management to occur, we can enhance forest resilience to fire, insects, and diseases.

F. Current and expected future conditions, including persistent droughts and uncharacteristic wildfires, have impacted and will continue to negatively impact forest health and the source water and habitat these forests provide. Water is an increasingly limited resource in Western states. Practicing forest management to improve forest health is critical to protecting and enhancing this precious resource. The fire mitigation efforts funded by this ballot measure will help to protect critical watersheds that provide drinking water for residents, by reducing fire impacts to water via runoff, flooding, contamination, and utility damage. Mitigation efforts will help to protect our watersheds, which provide drinking water, municipal, and agriculture use, by reducing the impacts of fire to water supplies.

G. Creating wildfire resilient communities, residents and homes is a priority goal of this wildfire mitigation initiative. Since 2004, Wildfire Partners, a Boulder County program, has helped 3,000 homeowners in the western part of Boulder County become more fire resilient. The Marshall Fire has illustrated the need to expand the scope of the county’s wildfire preparedness and mitigation programs to the eastern part of the county and increase the pace and scale of mitigation efforts in the west.

H. Restoring healthy forests that are more resilient to wildfire and safer places for firefighters to fight fires, are priority goals of this wildfire mitigation initiative. In August of 2020, federal, state, and local governments joined with non-profit entities in Boulder County to form the Boulder County Fireshed partnership as a shared vision for reducing the risk of wildfire to its people, communities, recreation areas, and natural resources through closely coordinated forest management across all lands.

I. In the face of these challenges, Boulder County is committed to continuing its role as a strong leader in proactive wildfire mitigation. The Wildfire initiative would provide resources to leverage state, federal and local wildfire mitigation grants, increase outreach and education efforts,

and provide for strategic planning with our partners to increase the pace and scale of wildfire mitigation across Boulder County.

J. The Board finds that the most appropriate response to these issues is to create a County-wide sales and use tax of 0.10% to provide revenue to fund programs and operations that address these issues.

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

L. The Board finds that if such tax is approved, revenues collected from the imposition of the 0.10% county-wide sales and use tax would be expended for the purposes and in accordance with the limitations set forth in this Resolution, effective for revenues collected from the imposition of the 0.10% county-wide sales and use tax on and after January 1, 2023.

M. The Board finds that the imposition of this 0.10% county-wide sales and use tax, effective in perpetuity or until repealed or revised by further vote of the citizens of Boulder County, and the exemption of such tax revenues and the interest on them from the fiscal year spending limitations of article X, section 20 of the Colorado Constitution, would provide additional revenues used to meet critical needs.

N. The Article provides for the submission of such a county-wide 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, or if no general election is to be held within 120 days, at a special election to be held for the purpose of voting thereon.

O. A General Election is scheduled for November 8, 2022.

P. The Board of County Commissioners of the County of Boulder, State of Colorado, desires to refer to the registered electors of the County of Boulder, State of Colorado, to be determined by a majority of voters voting on the measure, the question of whether such taxes and voter-approved revenue change shall be approved or disapproved.

Q. 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.

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

S. 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: There shall be referred to the registered electors of the County of Boulder at a General Election held on Tuesday, November 8, 2022, the following proposal:

1.(a) The imposition and collection of a countywide 0.10% (10 hundredths of one percent) sales and use 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) 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 0.10% (10 hundredths of one percent) sales and use tax is hereby extended and imposed 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 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 0.10% 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, Colorado Revised Statutes, as amended, any use tax imposed shall be collected, enforced and administered by the County of Boulder. 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 County-wide sales and use tax imposition proposal, the additional 0.10% County-wide sales and use tax shall continue to be effective throughout the incorporated and unincorporated portions of the County of Boulder in perpetuity and shall not expire, unless and until repealed or otherwise revised by a vote of the citizens of Boulder County.

7. If the majority of the registered electors voting thereon vote for approval of this County-wide sales and use tax proposal, revenues collected from the imposition of said 0.10% county-

wide sales and use tax would be expended for the purposes and in accordance with the limitations of this Resolution No. 2022-050, effective for revenues collected from the imposition of said 0.10% county-wide sales and use tax on and after January 1, 2023.

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

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 of Boulder 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. The net proceeds from the 0.10% sales and use tax received by the County shall be expended by the County for the following purposes:

(a) Strategic forest and grassland management projects to reduce the risk of catastrophic wildfire, protect drinking water and water supplies, and foster resilient ecosystems;

(b) Community partnerships and programs to help residents prepare for wildfires, create defensible space around homes, make homes more fire resistant, and provide technical assistance and rebates to homeowners;

(c) Fire mitigation staffing; and

(d) Other projects and services to proactively address the increasing risk of climate-driven wildfires.

13. Expenditures related to the above activities may include but are not limited to planning, design, operations, maintenance, and administration.

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

15. 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.

16. Upon the effective date of the imposition of the 0.10% county-wide sales and use tax proposed herein, the county-wide total sales and use tax rate of 0.9850%, when added to state and municipal sales and use tax rates existing as of the date hereof which are non-exempt under the provisions of Section 29-2-108, C.R.S., as amended, results in a total sales and use tax rate in

excess of the 6.9 percent limit stated in said statute as follows: Boulder: 8.945%; Boulder (retail food service): 9.095%; Erie: 8.585%; Lafayette: 8.585%; Longmont: 8.615%; Louisville: 8.735%; Lyons: 8.585%; Nederland: 9.085%; Superior: 8.545%; Ward: 7.085%.

17. 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.

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

19. The sales and use tax shall not expire.

20. A notice of the adoption of this county-wide 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.

21. 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.

A motion to approve this Resolution 2022-050 was made by Commissioner _____, seconded by Commissioner _____, and passed by a _____ vote.

ADOPTED this 4th day of August, 2022.

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

Marta Loachamin, Chair

Claire Levy, Vice Chair

Matt Jones, Commissioner

ATTEST:

Clerk to the Board: _____