

RESOLUTION NO. 2023-068

A RESOLUTION DESCRIBING A PROPOSAL FOR THE EXTENSION OF THE 0.05% COUNTYWIDE OPEN SPACE SALES AND USE TAX FOR THE PURPOSES OF ACQUIRING, IMPROVING, MANAGING, AND MAINTAINING OPEN SPACE LANDS AND OTHER OPEN SPACE PROPERTY INTERESTS; 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. There remains a continuing critical need for the preservation of open space lands in Boulder County, preserved open space being a fundamental shared value of the citizens of Boulder County, which open space lands can be used for purposes including but not limited to buffers to preserve community identity, natural areas, wildlife habitat and wetlands, preservation of agricultural uses, continuation of existing visual corridors and passive recreational use through the continued development of a countywide trail system, and therefore there is a critical need for countywide sales and use taxes to finance the acquisition, improvement, management and maintenance of said lands.

C. On November 2, 1993, the voters of Boulder County approved a 0.25% countywide sales and use tax and issuance of open space sales and use tax revenue bonds to acquire, improve, manage and maintain open space lands and other open space property interests, as described in Resolution No. 93-174, adopted August 31, 1993.

D. On November 2, 2004, the voters of Boulder County approved an extension of 0.10%, decreasing to 0.05% on January 1, 2025, of that countywide sales and use tax for open space-related purposes, as described in Resolution No. 2004-86.

E. Resolution 2004-86 required that the net revenues of the 0.10% open space countywide sales and use tax for the period January 1, 2005-December 31, 2024, be expended, along with the net proceeds from the issuance of the open space capital improvement trust fund bonds, to acquire, improve, manage, and maintain open space lands and other open space property interests.

F. Resolution 2004-86 required that, beginning on January 1, 2025, 0.05% of the countywide sales and use tax was approved to be effective in perpetuity, and was designated to be expended by the County of Boulder to manage, patrol, and maintain all County of Boulder open space property and trails in accordance with Parks and Open Space policies adopted by the Board of County Commissioners.

G. Resolution 2004-86 provided that the remaining 0.05% of the countywide open space sales and use tax would expire on December 31, 2024.

H. The Board desires to refer an extension of the 0.05% portion of the countywide open space sales and use tax that is set to expire on December 31, 2024, to the registered electors of the County of Boulder, State of Colorado, to be determined by a majority voting thereon.

I. The Board desires this extension to be effective for 15 years for the purposes of acquiring, improving, managing, and maintaining open space lands and other open space property interests.

J. Proposing to extend said 0.05% countywide sales and use tax, with revenues from said extended period to be expended for open space in accordance with the purposes set forth herein, is a cost-effective method of obtaining additional revenues, the proceeds of which will be used for said purposes, 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 said 0.05% countywide sales and use tax would continue to be expended for the purposes in accordance with Resolution No. 2004-86 and Resolution No. 93-174 through December 31, 2024, and then, beginning on January 1, 2025, would be superseded by this Resolution effective for revenues collected from the imposition of said 0.05% countywide sales and use tax.

L. The Board finds that the extension of the existing countywide sales and use tax in the existing amount of 0.05% from the current expiration date of December 31, 2024 to and including December 31, 2039, with proceeds of such extension to be utilized for open space purposes in accordance with the provisions of this Resolution, and the exemption of such tax revenues and the interest thereon from the fiscal year spending limitations of article X, section 20 of the Colorado Constitution (the "Article"), would permit these additional revenues to be utilized to further accomplish Boulder County's open space goals.

M. It is the intent of the Board of County Commissioners that, should the proposal to extend the existing countywide 0.05% 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 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.

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 said 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 said 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 said 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 0.05% sales and use tax and revenue change proposal as originally stated in Resolution No. 2004-86 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 0.05% (one twentieth 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 0.05% (one twentieth 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 0.05% 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 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

0.05% countywide sales and use tax extension proposal, such 0.05% countywide sales and use tax shall be in effect throughout the incorporated and unincorporated portions of the County until December 31, 2039, 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 extension proposal, revenues collected from the imposition of said 0.05% 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 0.05% countywide sales and use tax received by the County shall be expended by the County for the purpose of acquiring, improving, managing and maintaining open space lands and other open space property interests, including, but not limited to:

- (a) To acquire fee title interest in real property through all means available and by various types of instruments and transactions, in the County of Boulder for open space when determined by the Board of County of Commissioners, acting pursuant to authority as set forth in title 30, C.R.S., and in article 7 of title 29, C.R.S., to be necessary to preserve such areas;
- (b) To acquire an interest in real property by other devices, such as, but not limited to, lease, development rights, mineral and other subsurface rights, and conservation easements in order to effect the preservation of open space lands, as hereinafter defined, in the County of Boulder;
- (c) To acquire water rights and water storage rights for use in connection with real property acquired for open space;
- (d) To acquire rights-of-way and easements for access to open space lands and for trails in the County of Boulder and to build and improve such accessways and trails;

- (e) To acquire options related to these acquisitions;
- (f) To pay for all related costs of acquisition and construction as set forth in subparagraphs (a) through (c) above;
- (g) To improve all County of Boulder open space property and trails in accordance with Parks and Open Space policies adopted by the Board of County Commissioners; improvements shall be related to resource management, including but not limited to water improvements (irrigation, domestic use, and recreational uses), preservation enhancements (fences, wetlands, and wildlife habitat improvements), and passive recreational uses, such as trails, trailhead parking and other access improvements, picnic facilities and restrooms; and
- (h) To permit the use of these funds for the joint acquisition of open space property with municipalities located within the County of Boulder in accordance with an intergovernmental agreement for open space or with other governmental entities or land trusts.

13. Open space land, for the purposes of this resolution, is generally described as: those lands in which it has been determined by the Board of County Commissioners that it is, or may in the future be, within the public interest to acquire an interest in order to assure their protection and to fulfill one or more of the functions described below. Interests acquired may include fee simple, lease, easements, development rights, and conservation easements. Open space shall serve one or more of the following functions:

- (a) urban shaping between or around municipalities or community service areas and buffer zones between residential and non-residential development;
- (b) preservation of critical ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitat, natural resources and landmarks, and cultural, historical and archeological areas;
- (c) linkages and trails, access to public lakes, streams and other usable open space lands, stream corridors and scenic corridors along existing highways;
- (d) areas of environmental preservation, designated as areas of concern, generally in multiple ownership, where several different preservation methods (including other governmental bodies' participation or private ownership) may need to be utilized;
- (e) conservation of natural resources, including but not limited to forest lands, range lands, agricultural land, aquifer recharge areas, and surface water; and
- (f) preservation of land for outdoor recreation areas limited to passive recreational use, including but not limited to hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing.

Once acquired, open space may be used only for passive recreational purposes, for agricultural purposes, or for environmental preservation purposes, all as set forth above.

14. The Board of County Commissioners will annually consult the City Councils and Town Boards of the municipalities within Boulder County to assure that open space preservation and trail projects identified by municipalities are considered in setting county open space acquisition and trail development priorities for the following calendar year.

15. No open space land acquired through the revenues provided by this sales and use tax may be sold, leased, traded, or otherwise conveyed, nor may any exclusive license or permit on such open space land be given, until approval of such disposal by the Board of County Commissioners. Prior to such disposal, the proposed shall be reviewed by the Parks and Open Space Advisory Committee, and a recommendation shall be forwarded to the Board of County Commissioners. Approval of the disposal may be given only by a majority vote of the members of the Board of County Commissioners after a public hearing held with notice published at least ten (10) days in advance in the official newspaper of the County and of each city and incorporated town within the County, giving the location of the land in question and the intended disposal thereof. No such open space land shall be disposed of until sixty (60) days following the date of Board of County Commissioners' approval of such disposal. If, within such sixty (60) day period, a petition meeting the requirements of §29-2-104, C.R.S., as amended, or its successor statute, is filed with the County Clerk, requesting that such disposal be submitted to a vote of the electors, such disposal shall not become effective until a referendum held in accordance with said statute has been held. The provisions of this paragraph shall not apply to agricultural leases for crop or grazing purposes for a term of ten (10) years or less.

16. If the real property or any interest therein acquired by use of proceeds of said sales and use tax pursuant to paragraph 11 of this resolution be ever sold, exchanged, transferred or otherwise disposed of, the consideration for such sale, exchange, transfer or disposition shall be subject to the same expenditure and use restrictions as those set forth herein for the original proceeds of said sales and use tax, including restrictions set forth in this paragraph; and if such consideration is by its nature incapable of being subject to the restrictions set forth herein, then the proposed sale, exchange, transfer, or disposition shall be unlawful and shall not be made.

17. The County of Boulder will not use any of the revenues received from the sales and use tax to acquire an interest, other than an option, in open space land within the community service area of a municipality as designated and recognized by action of the Board of County Commissioners in accordance with the Boulder County Comprehensive Plan or as provided in an intergovernmental agreement with such municipality, without the concurrence of the municipality involved.

18. Revenue generated from activities on open space lands may be used to acquire, manage, patrol, improve, and maintain open space properties.

19. If the proposal to extend the existing countywide 0.05% 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 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.

20. 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.

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

22. For the 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.

23. The existing county-wide 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%.

24. 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.

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

27. 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.

28. 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 2023-068 was made by Commissioner Ashley Stolzmann, seconded by Commissioner Marta Loachamin, and passed by a 3-0 vote.

ADOPTED this 17th day of August 2023.

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:

Claire Levy

Claire Levy, Chair

Ashley Stolzmann

Ashley Stolzmann, Vice Chair

Marta Loachamin

Marta Loachamin, Commissioner

ATTEST:

Clerk to the Board: *Cecilia Lacey*