

RESOLUTION 2016-79

A Resolution of the Board of County Commissioners of Boulder County describing a proposal to extend one-half (0.125%) of the existing 0.25% countywide open space sales and use tax for the purpose of funding sustainability infrastructure and programs; a voter-approved revenue change; and providing other matters relating 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. Boulder County leaders and citizens have long held a commitment to stewardship of our land, environment and community. By prioritizing natural resource conservation and environmental sustainability, we can achieve greater economic vitality in our communities; ensure cleaner air, land and water for the well-being and health of residents; and combat major environmental issues, such as climate change, resource depletion, ecosystem degradation, pollution, waste management, and access to healthy and sustainable food sources.

C. The Boulder County Board of County Commissioners (the "Board") finds it is paramount to increase infrastructure and programs that will ensure the environmental, social and economic well-being of the County and its natural and human resources for present and future generations.

D. The effects of climate change on our environment and quality of life in Colorado are a real and growing cause for concern. Increasingly, scientific evidence demonstrates that carbon dioxide, methane and other greenhouse gases released into the atmosphere from the use and reliance on fossil fuels are exerting a profound detrimental effect on the global climate, the impacts of which are likely to be realized on a local level through hotter summers, warmer winters, thinner snow-pack, earlier spring runoff, more precipitation falling as rain, longer periods of drought, more frequent and intense wildfires, widespread beetle infestations in pine forests, water shortages, and increased public health problems, resulting in higher rates of chronic and infectious disease.

E. Colorado generates most of its electricity from coal-fired power plants, and over half of all greenhouse gas emissions in Boulder County result from the energy needed to operate, heat, light and power homes and businesses. The drilling extraction and transportation of fossil fuels required to supply this power contributes disproportionately to the effects of climate change through release of carbon dioxide and other greenhouse gases, including potent methane leakage from natural gas wells, making the need to reduce energy consumption, increase the use of clean energy and transition away from fossil fuels imperative.

F. Emissions from fossil-fuel powered vehicles, in addition to producing dangerous local and regional air pollutants that carry significant risks for human health, are the second largest source of ozone-forming air pollution in Colorado's Front Range, making up one third of the county's total greenhouse gas emissions and thus posing a critical need to support sustainable transportation systems, alternative transportation infrastructure and fuel-efficient vehicles to reduce congestion on our roadways and reduce transportation-related emissions and pollutants.

G. The waste produced from our homes, businesses and industrial sources is another substantial contributor to greenhouse gas emissions, as well as pollution of our land, air and water. Significant energy is required to extract and harvest resources and raw materials, to transform these materials into useful products, transport goods and provide services, and to process disposal of consumed materials. County residents and businesses throw away an estimated 250,000 tons of "garbage" each year. This waste releases methane, generated from otherwise compostable materials decomposing in landfills. Proper solid and hazardous waste management, including reuse, recycling and composting options is of utmost importance for combating climate change and preventing degradation of environmental resources.

H. In the semi-arid climate of Colorado, Boulder County's rivers and streams are a vulnerable and invaluable resource in the provision of clean and plentiful drinking water and support for important riparian ecosystems essential to abundant fish and wildlife populations. In the face of increasing population growth across Boulder County and the region, conserving and protecting our water resources from overuse and depletion, pollutant contamination, and unsustainable agricultural practices is paramount to preserving the health of our residents and ecosystems.

I. As the populations of Colorado's Front Range communities continue to grow, the need for County residents to have reliable access to healthy, locally grown food options is also of pressing concern, and it is critical to encourage and implement sustainable land management and farming practices that lessen the impact of soil and resource degradation, conserve water and energy, and support healthy ecosystems.

J. In the face of these challenges, Boulder County is committed to continue its role as a strong leader in conservation and environmental sustainability. In 2005, the Boulder County Sustainability Initiative was created to support policies and practices that reduce the environmental footprint of County operations as well as to provide nationally recognized conservation programs and environmental services for County employees, residents and businesses in the larger community. The Sustainability Initiative provides resources, knowledge and services to make sustainability an integral part of the County's public service mission, and played an integral role in the adoption of Boulder County's Environmental Sustainability Plan in 2012, laying out the comprehensive goals, targets, and key strategies to help Boulder County, as a community and as a government agency, become more environmentally sustainable.

K. Building on the work of the Sustainability Initiative and in an effort to fully implement the purpose and goals of the Sustainability Plan, the Board desires to expand upon current successful programs as well as implement new countywide projects and services to reduce greenhouse gas emissions, conserve our natural resources, support the local economy, protect the health of our residents and ecosystems, and be environmental stewardship leaders through:

- Promoting energy efficiency by conserving the energy needed to operate and power our buildings through deep energy efficiency upgrades, expanding “net zero” energy codes, and helping replace fossil fuel power and heating sources with clean, renewable energy;
- Striving to become a “zero waste” community through waste reduction and diversion initiatives and infrastructure, and develop and promote effective reuse, recycling and composting options;
- Supporting new and improved vehicle technologies, electric vehicles, strategies to reduce the number of vehicle miles traveled, increased transit services and other transportation Demand Management strategies;
- Providing for the wise use, conservation and protection of water and other natural resources; and
- Supporting local and organic food production and sustainable agricultural practices.

L. In order for Boulder County to succeed in its commitment to these goals, the Board finds it necessary to establish an ongoing and reliable source of funding to assist in developing and securing the essential facilities and services to provide County residents and businesses with the very best environmental programs, and determines that a countywide sales and use tax dedicated to sustainability efforts would provide necessary funding to develop, implement and achieve these conservation and sustainability goals.

M. On November 2, 1993, the voters of the County approved a 0.25% countywide sales and use tax for the acquisition, improvement, management and maintenance of open space lands, as described in Resolution 93-174.

N. On November 2, 1999, the voters approved a proposal for the extension of the 0.25% countywide open space sales and use tax, for an additional period of ten (10) years to and including December 31, 2019, as described in Resolution 99-111.

O. The Board now desires to refer to the registered electors of the County an extension of one-half of the existing 0.25% open space sales and use tax at a rate of 0.125% for an additional period of fifteen (15) years to be effective through December 31, 2034, for the new purpose of funding sustainability facilities and programs.

P. The Board finds that extension of one-half of the existing countywide sales and use tax at the rate of 0.125% for an additional period of fifteen (15) years to and including December 31, 2034, with proceeds of such extension to be utilized for sustainability infrastructure and programs in accordance with the provisions of this Resolution, and the exemption of such tax revenues and the interest thereon from fiscal year spending limitations of article X, section 20 of the Colorado Constitution, would permit additional revenues to be utilized to further accomplish the County's sustainability goals and provide a cost-effective method of obtaining additional revenue for sustainability initiatives without an increase in the total cumulative countywide sales and use tax rate.

Q. If such extension is approved by the voters, revenues collected from the imposition of the 0.25% 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. 99-111, and Resolution 99-111 would be superseded by this Resolution effective for revenues collected from the imposition of the extended 0.125% countywide sales and use tax on and after January 1, 2020.

R. The Article provides for the submission of such a 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.

S. 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.

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

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

V. Should the proposal to extend the existing countywide sales and use tax at a rate of 0.125% 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 8, 2016, the following proposal:

1. (a) The imposition, by the extension of one-half of a countywide 0.25% (25 hundredths of one percent) sales and tax, of a countywide 0.125% (12.5 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) 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 and use 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 and use 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 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) 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:

(i) The purchaser is a non-resident of or has his principal place of business outside of the County; and

(ii) 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 the extension of one-half of a countywide 0.25% (25 hundredths of one percent) sales and use tax, of a countywide 0.125% (12.5 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 of 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 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 January 1, 2020.

3. The 0.125% 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 0.125% 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, 2034.

7. If such extension is approved by the voters, revenues collected from the imposition of the existing 0.25% 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. 99-111, and Resolution 99-111 would be superseded by this Resolution effective for revenues collected from the imposition of the extended 0.125% 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. Beginning January 1, 2020, the net proceeds from the extension of the 0.125% countywide sales and use tax received by the County from collections during the period authorized hereby shall be expended by the County for the following purposes

related to sustainability infrastructure, programs and services, including but not limited to:

- (a) programs to conserve our water resources by helping farmers, residents and businesses reduce their water use;
- (b) recycling and composting services and facilities for Boulder County residents and business owners to help reduce waste;
- (c) energy efficiency and renewable energy services, such as EnergySmart programs for homes and businesses and home weatherization for low income households;
- (d) assistance to local farmers to grow more local and organic food for Boulder County residents;
- (e) programs to increase transportation choices by making it easier to use public transit, providing affordable transportation options for low income residents and students, and promoting electric vehicles and charging stations; and
- (f) allocation of monies to provide funding for priority sustainability initiatives in local communities in Boulder County.

12. A special fund, to be known as the “Sustainability Projects and Programs Fund” shall be created, into which all net proceeds of the sales and use tax collected for sustainability infrastructure and programs shall be deposited, and expenditures from which shall be made for the purposes set forth above. Interest generated from the revenues of the sales and use tax for sustainability purposes shall be deposited in the Sustainability Projects and Programs Fund and used for the purposes set forth above.

13. Monies deposited in the Sustainability Projects and Programs Fund may be appropriated as determined by the Board during the County’s annual budget process. Prior to determination of the annual budget and appropriations, the Board shall hold a public hearing on proposed expenditures for sustainability projects, programs and services recommended by County staff to be funded in the next fiscal year. Determinations of project funding shall be made by the Board, in its sole discretion, considering such factors as project need, available technology and other relevant circumstances at the time of the proposal.

14. Consistent with the purposes set forth above, up to ten percent (10%) of the total proceeds of the sales and use tax collected for sustainability projects and programs will be allocated annually for distribution as grant funding for sustainability-focused initiatives that will address the priority needs of local communities in Boulder County. Approximately eighty percent (80%) of this grant funding pool will be directed to cities and towns applying for municipal project grants on the basis of program need and proportionate to community population. Approximately twenty percent (20%) of this

grant funding pool will be allocated for innovation, research and pilot program support for non-profit agencies, schools and the private sector. All grant disbursements will be subject to the recipient's submission of annual spending reports and adherence to terms of use of such funds.

15. For purposes of Colo. Const., Art. X, Section 20, ("TABOR"), the receipt and expenditure of revenues of the extended 0.125% 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.

16. The sales and use tax shall expire at 12:00 a.m. on January 1, 2035, and any monies remaining after January 1, 2035 may continue to be expended solely for the purposes set forth herein until completely exhausted.

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

18. 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, 2016.

19. The election shall be conducted on November 8, 2016 as a coordinated election in accordance with articles 1 to 13 of title 1, C.R.S. (the "Uniform Election Code").

20. 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.

21. No later than September 9, 2016, 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.

22. The order of the ballot shall be determined by the County Clerk as provided in Section 1-5-407(5), C.R.S., and the rules of the Secretary of State. In accordance therewith, if the County refers more than one ballot issue, the order of the ballot shall, in accordance therewith, be as follows: first, measures to increase taxes; second, measures to retain revenues in excess of its fiscal year spending limit; third, measures to increase debt; fourth, citizen petitions; and fifth, other referred measures. If the County refers more than one ballot issue within any such type of ballot issue, the order within such type of ballot issue shall, unless otherwise determined by the Board, be the same as the order of the ballot issues in the resolution of the Board that orders that such ballot issues be so referred (with questions set forth in separate resolutions listed in the order in which such resolutions were adopted).

23. 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.

24. No later than September 27, 2016, 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.

25. 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.

26. 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.

27. 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.

28. 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 approve this Resolution 2016-79 was made by Commissioner Jones, seconded by Commissioner Domenico, and passed by a 3-0 vote.

[Signature page to follow]


ADOPTED this 28th Day of July, 2016.


ATTEST:




Clerk to the Board

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY**


Elise Jones, Chair


Cindy Domenico, Vice Chair


Deb Gardner, Commissioner