

RESOLUTION NO. 2009-100

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY DESCRIBING A PROPOSAL FOR THE EXTENSION OF AN EXISTING 0.25% COUNTYWIDE SALES AND USE TAX; FOR THE ISSUANCE OF OPEN SPACE CAPITAL IMPROVEMENT TRUST FUND BONDS THROUGH A MULTIPLE-FISCAL YEAR COMMITMENT OF REVENUES FROM SUCH TAX, AND FROM OTHER OPEN SPACE SALES AND USE TAX REVENUES, GENERAL FUND MONEYS AND OTHER LEGALLY AVAILABLE FUNDS; AND A VOTER-APPROVED REVENUE CHANGE; SETTING THE TITLE AND CONTENT OF THE BALLOT ISSUE FOR SUCH PROPOSAL; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, Article 2, Title 29, Colorado Revised Statutes, as amended (hereinafter the "Article"), 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; and

WHEREAS, on August 31, 1993, the Board of County Commissioners adopted Resolution 93-174, proposing and placing on the 1993 off-year (special) election ballot the approval of a 0.25% county-wide sales and use tax and issuance of open space sales and use tax revenue bonds, the proceeds of said tax and bonds to be spent in accordance with the terms of said resolution to acquire, improve, manage and maintain open space lands and other open space property interests; and

WHEREAS, the voters of the County of Boulder approved the county-wide sales and use tax and bonds proposal described in said Resolution 93-174; and

WHEREAS, on August 5, 1999, the Board of County Commissioners adopted Resolution 99-111, proposing and placing on the 1999 coordinated election ballot the approval of the extension of said 0.25% county-wide sales and use tax and issuance of additional open space sales and use tax revenue bonds, the proceeds of said tax and bonds to be spent in accordance with the terms of said resolution to acquire, improve, manage and maintain open space lands and other open space property interests; and

WHEREAS, the voters of the County of Boulder approved the proposal for the extension of said county-wide sales and use tax and issuance of said bonds described in said Resolution 99-111, and said county-wide sales and use tax have been collected and the revenues therefrom expended in accordance with the terms of said resolution, and prior to its effectiveness, in accordance with the provisions of Resolution 93-174; and

WHEREAS, the goals of the County open space program, as originally stated in Resolution 93-174, and as modified over time, have not as yet been fully realized, in that there are numerous lands and areas for which property interests should be acquired in order to create trails and open space buffers for communities, protect wildlife habitat and preserve important agricultural lands; and

WHEREAS, there remains a 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, allow continuation of existing visual corridors and offer passive recreational use through the development of a recreational trail system, and therefore there is a critical need for county-wide sales and use taxes to finance the acquisition and limited improvement of said lands; and

WHEREAS, the current bond proceeds from the revenues approved by the voters for open space purposes will soon be expended or committed, and without additional funding sources, no additional uncommitted acquisitions could take place for the future; and

WHEREAS, it is more cost-effective to purchase lands now rather than wait until additional revenues are realized from currently approved sources, since the price inflation of land costs is several times greater than the financing costs through tax-exempt bonds; and

WHEREAS, proposing to extend said 0.25% county-wide sales and use tax for fifteen years, through December 31, 2034, with future revenues to be expended for open space acquisition and improvement, for repayment of capital improvement trust fund bonds, and for maintenance and management of open space lands, in accordance with the purposes set forth herein, is a cost-effective method of obtaining additional revenues without an increase in the total cumulative county-wide sales and use tax rate; and

WHEREAS, if such extension is approved, revenues collected from the imposition of said 0.25% county-wide 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 No. 99-111 would be superseded by this Resolution effective for revenues collected from the imposition of said 0.25% county-wide sales and use tax on and after January 1, 2020; provided that the exemptions from sales tax set forth in Section 1(d) hereof would be effective on January 1, 2010; and

WHEREAS, due to the immediacy of the need, open space capital improvement trust fund bonds as authorized by law in a maximum principal amount of \$50,000,000, net of any premium, should be issued in order to allow such acquisitions and improvements to take place as soon as possible, said revenue bonds to be repaid through a multiple-fiscal year commitment of revenues received from the extended 0.25% county-wide sales and use tax, and, to the extent moneys from such tax are not sufficient, moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from other open space sales and use tax moneys, the County's general fund, and other legally available funds; and

WHEREAS, this Board finds that the extension of the existing county-wide sales and use tax in the existing amount of 0.25% from the current expiration date of December 31, 2019, through December 31, 2034, with proceeds of such extension to be utilized for open space purposes in accordance with the provisions of this Resolution, and the issuance of up to \$50,000,000 in open space capital improvement trust fund bonds repaid through a multiple-fiscal

year commitment of revenues received from the extended 0.25% county-wide sales and use tax, and, to the extent moneys from such tax are not sufficient, moneys transferred to the Boulder County Open Space Capital Improvement Trust Fund from other open space sales and use tax moneys, the conservation trust fund, the County's general fund, and other legally available funds, and the exemption of such tax revenues, bond proceeds and the interest thereon from the fiscal year spending limitations of article X, section 20 of the Colorado Constitution ("TABOR"), would permit additional revenues to be utilized now to further accomplish Boulder County's open space goals while lands are still undeveloped and at lower cost to the public than if acquisition were postponed to future years; and

WHEREAS, Boulder County, with voter approval, is statutorily authorized to issue bonds to finance open space acquisitions and improvements, and to repay those bonds from any revenue source available to the County; and

WHEREAS, 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 voting thereon, the question of whether such taxes, bonds and voter-approved revenue change shall be approved or disapproved; and

WHEREAS, said Article provides for the submission of such a countywide sales and use tax proposal and multiple fiscal year obligation authorization to the registered electors of the County at a general election scheduled within 120 days after adoption of such resolution, but since no general election is scheduled within that time, this proposal shall be placed upon the November 3, 2009 coordinated election ballot as required by Colo. Const., Art. X, Section 20(3)(a); and

WHEREAS, 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; and

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

WHEREAS, the said Article provides that the proposal shall contain certain provisions concerning the amount, levying and scope of said tax; and

WHEREAS, it is the intent of the Board of County Commissioners that, should the proposal to extend the existing county-wide 0.25% sales and use tax, issue new bonds, and obtain a voter-approved revenue change for such tax, bond and earnings proceeds, 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 full force and effect as if this Resolution had not been adopted;

NOW, THEREFORE, BE IT RESOLVED that the existing county-wide 0.25% sales and use tax, revenue bond, multiple fiscal year revenue commitment, and revenue change proposal as

originally stated in Resolution No. 93-174, as amended and extended as provided in Resolution No. 99-111, shall be amended as set forth below upon the approval of a majority of registered electors voting thereon.

BE IT FURTHER RESOLVED THAT there shall be referred to the registered electors of the County of Boulder at the coordinated election to be held on Tuesday, November 3, 2009, the following proposal:

1. (a) A countywide one quarter of one percent (0.25%) sales tax in accordance with the provisions of the Article is imposed on the sale of tangible personal property at retail or the furnishing of services in the County of Boulder as provided in paragraph (d) of subsection (1) of section 29-2-105, C.R.S., as amended, and as is more fully hereinafter set forth.

(b) For the purposes of this sales tax 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 of Boulder or to a common carrier for delivery to a destination outside the limits of the County of Boulder. 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 of title 39, C.R.S., as amended, regardless of the place to which delivery is made. If a retailer has no permanent place of business in the County of Boulder 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.

(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 tangible personal property and services taxable pursuant to this proposal shall be the same as the tangible personal property and services taxable pursuant to section 39-26-104, C.R.S., as amended, and subject to the same sales tax exemptions as those specified in part 7 of article 26 of title 39, C.R.S., as amended, and further subject to the exemption for sales of food (as defined in section 39-26-102(4.5), C.R.S., as amended) specified in section 39-26-707 (1) (e), C.R.S., as amended, the exemption for purchases of machinery and machine tools specified in section 39-26-709 (1), C.R.S., as amended, and the exemption of sales and purchases of those items in section 39-26-715(1)(a)(II), C.R.S., as amended, the exemption 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., as amended, the exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles specified in section 39-26-723, C.R.S., as amended, 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., as amended, the exemption for sales that benefit a Colorado school specified in section 39-26-725, C.R.S., as amended, and the exemption for sales of cigarettes specified in section 39-26-706(1)(c), C.R.S., as amended.

(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 of Boulder 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 of Boulder; and

(2) Such personal property is registered or required to be registered outside the limits of the County of Boulder 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 of Boulder. A credit shall be granted against the sales tax imposed by the County of Boulder 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 of Boulder.

(h) The sales tax imposed shall be collected, administered and enforced by the Executive Director of the Department of Revenue in the same manner as the collection, administration and enforcement of the Colorado state sales tax, as provided by article 26 of title 39, 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. A countywide one quarter of one percent (0.25%) use tax in accordance with the provisions of the Article is imposed for the privilege of using or consuming in the County of Boulder any construction and building materials purchased at retail and for the privilege of storing, using, or consuming in the County of Boulder any motor and other vehicles, purchased at retail on which registration is required. The use tax shall not 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 of Boulder;

(b) To the storage, use, or consumption of any tangible personal property purchased for resale in the County of Boulder 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 of Boulder 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

