CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: August 4, 2015

AGENDA TITLE: INTRODUCION, FIRST READING, AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, ORDINANCE No. 8067 SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY NOVEMBER 3, 2013, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO ADOPT AN OCCUPATIONAL PRIVILEGE TAX ON EMPLOYERS AND EMPLOYEES THAT ARE LOCATED OR WORK WITHIN THE CITY OF BOULDER AT THE RATE OF $$**** PER MONTH FOR EACH PERSON EMPLOYED BY AN EMPLOYER AND EACH EMPLOYEE BEGINNING JULY 1, 2016; SETTING FORTH THE BALLOT TITLE; AND SETTING FORTH RELATED DETAILS.

PRESENTER/S
Jane S. Brautigam, City Manager
Tom A. Carr, City Attorney
David Gehr, Deputy City Attorney
Bob Eichem, CFO
Cheryl Pattelli, Director of Finance
Pat Brown, Revenue and Licensing Officer
Liz Hanson, Economic Vitality Coordinator

EXECUTIVE SUMMARY

Included in the June 16 Council Agenda packet was an information packet item regarding an Occupational Privilege Tax (OPT) which is often referred to as a Head Tax. At the July 14, 2015 study session, staff was asked to bring forward a proposed ballot item for first reading that could be considered for discussion and potential implementation of such a tax in the City of Boulder. There are currently five cities in Colorado that have such a tax.

Tables 2, 3 and 4 reflect the amounts per one dollar of tax based on the various parameters that were discussed at the study session. The three items that will need to be decided by council before first reading can be completed. The rate per employee needs to

be set, the level of the exemptions (which can be found in tables 2, 3 and 4) and the total projected revenue that would be collected for a full year. and the total amount of revenue that is projected to be collected in the first year.

As was discussed at the study session, if the tax is placed on the ballot and is passed by the voters, the earliest the tax could be started would be July 1, 2016. This would provide time for an education program, the installation of new software, and the addition of staff to be trained and to administer the new tax. These costs are not included in Attachment C that covers the costs of various levels of an expanded Eco Pass program or other transportation uses of the revenue that would be generated by the new tax if it is placed on the ballot and is passed by the voters.

Ranges of the tax projected to be collected for a full year per one dollar of tax given exemptions ranging from $6,000 of income per year to $33,600 (50% of AMI) are $1.3 to $1.7 million combined per dollar of tax for both the employer and employee. In tables 2, 3 and 4 found in the background and analysis section, staff has run projections ranging from $2 to $5 dollars per month for employer and employee. Since the implementation would not begin until mid-year the first year of collections would need to be reduced by one half.

At the July 14 Council meeting it was requested that staff provide additional information regarding potential use of revenue from the tax for citywide Eco passes, middle and high school students and other transportation programs. This information can be found in **Attachment C.** Included in the attachment are concerns expressed by staff regarding the work to be completed by the Community-wide Eco Pass Policy Advisory and Technical Advisory Committees when compared to the timing of the implementation of the tax.

STAFF RECOMMENDATION

Suggested Motion Language:
Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only Ordinance No. 8067 submitting to the registered electors of the City of Boulder at the general municipal coordinated election to be held on Tuesday, November 3, 2015, the question of authorizing the city council to adopt an occupational privilege tax on employers and employees that are located or work within the City of Boulder at the rate of $**** per month for each person employed by an employer and each employee beginning July 1, 2016; setting the ballot title; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The economic impact of an Occupational Privilege Tax has differing views by different members of the community. Some feel strongly such a tax is needed to help offset the ongoing impact on transportation costs and

infrastructure. Others feel it will put the businesses in the City of Boulder at an operating disadvantage when competing with businesses located outside of Boulder that would not pay the tax.

- Environmental – The actual tax itself will not have an environmental impact on the city of Boulder. The taxes collected can be used to offset negative impacts that are incurred by the City.
- Social – The actual impact will depend on the level of income that would be exempt from the tax.

OTHER IMPACTS

- Fiscal – The actual fiscal impact will not be known until the employee and employer rates and exemptions are set in the ballot language. A more detailed impact analysis can be found within the background and analysis section of this memo.
- Staff time – Preparation of the ballot language and memo for the OPT has been absorbed in the staff work plan. If the tax is placed on the ballot and is passed by the voters an educational program would be developed and implemented. Additional staff and software changes will be needed to implement the administration of the tax.

BOARD AND COMMISSION FEEDBACK

The Community-wide Eco Pass Policy Advisory and Technical Advisory Committees have discussed the use of a head tax to fund the employee portion of a city or county-wide Eco Pass program. There has not been a specific recommendation by the committees.

PUBLIC FEEDBACK

Since the Council study session held on July 14, 2015 there have been numerous e-mails and other correspondence received by council and staff. Input has been both for and against the OPT. A website with commonly asked Questions and Answers has been created to receive business input. A summary of the themes of the input received can be found in **Attachment D.**

BACKGROUND AND ANALYSIS

Municipalities in Colorado are not permitted to collect an income tax. That right is reserved for the state. Cities may impose an occupational privilege tax (OPT). This is often referred to as a head tax because of the way it is imposed. Specifically, the OPT, in its pure form, imposes a flat dollar amount on each employee working within the boundaries of the municipality. In other words, it is a tax per head rather than a percent of income.

An OPT is currently in place in Denver, Aurora, Greenwood Village, Sheridan and Glendale. Table 1 illustrates the OPT rates paid by employees in their corresponding municipalities.

Table 1
Rate Paid by Employee Matched by Employer Unless Exempt

	City/County Denver	City of Aurora	Greenwood Village	Sheridan	Glendale
OPT Rate per Employee per Month	$5.75	$2.00	$2.00	$3.00	$5.00

At the April 14, 2014 study session, it was requested that staff provide background information prior to the City Council recess regarding the Occupational Privilege Tax, often referred to as a Head Tax. At the July 14 council study session the tax was a specific topic of discussion and staff received general direction to bring an ordinance for first reading forward for Council discussion and action. The full staff report can be found as **Attachment B**.

General direction that staff heard at the study session has been incorporated as the following in the proposed ballot question to be considered for first reading:

1. The ordinance should provide for Taxpayer Bill of Rights (TABOR) taxation authorization. The rates and first year revenue to be determined during first reading ordinance consideration.
2. The tax would be on the employer and employee unless there is an exemption.
3. Exempt 501(c) (3) and governments as an employer. The tax would apply to the employees of the governmental organization unless they fall under the income exemption.
4. Revenue generated to be used for transportation projects, limitation eco passes, capital improvements and transportation programs. Council members expressed in interest in ensuring that the revenue source be flexible in its use.
5. Tax to be effective in the 3rd quarter of 2016 and be a perpetual tax.
6. Use Denver ordinance as a model for implementation.
7. Create a low income worker exemption that includes some discretion for council to set the rate. The exemption rate should be higher than it currently is in other cities that have such tax. The exemption should be tied to a monthly income threshold.

Based on the input received staff further refined the revenue and expenditure projections.

Tables 2 through 4 are summaries of projected revenues based on rates per employee and various levels of income exemptions.

The projections have been made with government and 501 (C) (3) employers exempt. The employee pays the tax unless they fall under the exemption level. Based on the research completed by city staff, the percent of total employees for which the OPT tax has been paid in past years in cities that have the OPT have ranged from 79 to 86 percent, with an average of 82 percent. Based on this data the calculations of revenue produced with each dollar of tax rate have been adjusted to take this into account.

In Tables 3 and 4 below, staff has used rounded numbers when applying a percentage of AMI as an exemption per month. This is done for ease of administration for both the employer and the City. Table 3 is close to the $20,000 amount discussed by Council at the July 14 study session. None of the cities surveyed have escalation clauses in their ordinances. If an increase is contemplated it would need to be a ballot item in a future year. Staff does not recommend including an escalation clause as it makes ongoing administration more complex for both the employer and the City. If there is not an escalation clause, revenues will increase or decrease based on the number of jobs within the city that exceed the exemption level.

Table 2

Projected Revenue per Year at Various Rates with $500 exemption level/month.
Annualized income for exemption is $6,000.
The amount per $1 of tax is estimated to be approximately $850,000

OPT Rate	# of Workers	Employee Paid OPT	Employer Paid OPT less Government-Match	Estimated Annual OPT Paid	Estimated Annual OPT per $1
$2	93,972	$1,929,346	$1,485,010	$3,414,356	$,1,707,178
$3	93,972	$2,894,019	$2,227,515	$5,121,534	
$4	93,972	$3,858,692	$2,970,020	$6,828,712	
$5	93,972	$4,823,365	$3,712,525	$8,535,891	

Table 3

Projected Revenue per Year at Various Rates with $1,700 exemption level/month.
Annualized income for exemption is $20,400 or close to 30% of AMI.
The amount per $1 of tax is estimated to be approximately $760,000

OPT Rate	# of Workers	Employee Paid OPT	Employer Paid OPT less Government-Match	Estimated Annual OPT Paid	Estimated Annual OPT per $1
$2	84,682	$1,746,529	$1,302,193	$3,048,722	$1,524,361
$3	84,682	$2,619,793	$1,953,289	$4,573,082	
$4	84,682	$3,493,058	$2,604,386	$6,097,444	
$5	84,682	$4,366,322	$3,255,482	$7,621,804	

Table 4

Projected Revenue per Year at Various Rates with $2,800 exemption level/month.
Annualized income for exemption is $33,600 or close to 50% of AMI.
The amount per $1 of tax is estimated to be approximately $650,000

OPT Rate	# of Workers	Employee Paid OPT	Employer Paid OPT less Government-Match	Estimated Annual OPT Paid	Estimated Annual OPT per $1
$2	73,436	$1,525,201	$1,080,865	$2,606,066	$1,303,033
$3	73,436	$2,287,801	$1,621,297	$3,909,099	
$4	73,436	$3,050,402	$2,161,730	$5,212,132	
$5	73,436	$3,813,002	$2,702,162	$6,515,165	

NEXT STEPS

If council wishes to pursue placing the OPT on the November ballot and passes the attached ordinance on the first reading, a second reading will occur on Aug 18. If needed, a third reading would occur on Sept. 1. All ballot items must be passed on final reading by council by the first meeting in September to meet county deadlines for ballot measures.

ATTACHMENTS

A: Proposed Ordinance
B: Information Packet memo regarding the OPT included in the June 16 agenda packet.
C: Transportation Uses for Occupational Privilege Tax Revenue
D: Summarized input received via e-mail or website

ORDINANCE NO. _____

(Occupational Privilege Tax)

AN ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE SPECIAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2015, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO ADOPT AN OCCUPATIONAL PRIVILEGE TAX ON EMPLOYERS AND EMPLOYEES THAT ARE LOCATED OR WORK WITHIN THE CITY OF BOULDER AT THE RATE OF $$**** PER MONTH FOR EACH PERSON EMPLOYED BY AN EMPLOYER AND EACH EMPLOYEE BEGINNING JULY 1, 2016; SETTING FORTH THE BALLOT TITLE; AND SETTING FORTH RELATED DETAILS.

Section 1. A general municipal coordinated election will be held in the city of Boulder, county of Boulder and state of Colorado, on Tuesday, November 3, 2015.

Section 2. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the measure:

BALLOT QUESTION NO. _____

EMPLOYER AND EMPLOYEE OCCUPATIONAL PRIVILEGE TAX

Shall city of Boulder taxes be increased $_____ annually in the first year and by whatever amounts are raised annually though an occupational privilege tax to be paid by persons employed and employers within the city limits of Boulder at a rate of $_____ per month, beginning on July 1, 2016, with such revenues collected used for purposes related to transportation including without limitation funding for transit passes, transportation programs, and transportation capital improvements; and

In connection therewith,

Shall the full proceeds of such taxes at such rates and any earnings thereon be collected, retained, and spent as a voter-approved revenue change without limitation or condition, and without limiting the collection, retention, or spending of any other revenues or funds by the city of Boulder under Article X Section 20 of the Colorado Constitution or any other law?

FOR THE MEASURE ____ AGAINST THE MEASURE ____

Section 3. If such ballot question is approved by the voters, the following Chapter 3-16, "Occupational Privilege Tax," B.R.C. 1981, shall be adopted by the City Council effective January 1, 2011:

Chapter 16 Occupational Privilege Tax

3-16-1 Legislative Intent.

The city council intends that a privilege and occupational tax be levied on employers within the city and employees that work in the city. The purpose of this tax is to increase the revenue base for the city to provide municipal improvements and services related to the transportation impacts that employment may cause to the community. Revenues from the tax shall be deposited in the general fund and shall be available to pay for the general expenses of government.

The city council recognizes that it cannot bind future city councils, it nonetheless declares its intention that sufficient revenues generated by this tax be appropriated by future city councils for transportation related programs, transit passes, and capital improvements with the remainder used to fund other governmental expenses including police, fire, libraries, transportation, and general government. Each council shall decide what constitutes sufficient funds. As used here, sufficient shall mean an amount determined by council to balance the revenue received with the established need in the community for programs to address the subjects identified above.

3-16-2 Definitions.

The following terms, words and phrases, as used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Employee" means any natural person who performs sufficient services for wages or other remuneration for any period of time in a calendar month to receive as compensation such services no less than $_____ upon a salary, wage, commission or other compensation basis, as long as any part of such services are performed within the city;

and is considered an employee for purposes of withholding federal income tax under the provisions of the Internal Revenue Code, as amended, and associated regulations.

"Employer" means any person, association, corporation (including a corporation not-for-profit), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity, who or that employs one or more persons on a salary, wage, commission, or other compensation basis who owns a business located within the city as the term business is defined in this code.

3-16-3 Imposition and Rate of Tax.

(a) Occupational Privilege Tax. There is levied and shall be paid an occupational privilege tax of ____ dollars ($__.00) per month upon all employees and employers within the city.

(1) Employees. Each employee within the city shall pay an employee occupational privilege tax of ____dollars ($__.00) per month for each and every month in which such employee performs or offers work or services during a given calendar month for a business located within the city.

(2) Employers. Each employer shall pay an employer occupational privilege tax of ____ dollars ($__.00) per month for each and every employee for each and every month in which such employee performs or offers work or services during a given calendar month for a business located within the city. For the purposes of this chapter, "business" includes any lawful business, trade, occupation, profession, avocation, or calling of any kind having a fixed or transitory situs within the city.

(b) Additional Tax. This tax is in addition to all other taxes of any type or nature levied by the city.

(c) Owners, Partners, and Proprietors. Businesses with owners, partners or proprietors engaged in business located within the city are subject to the employer occupational privilege tax of ____ dollars ($__.00) per month for each owner, partner, or proprietor even if that person pays the employee tax through an employer at a different job. An Owner, Partner or Proprietor is not an Employee. All such persons are subject to the ta regardless of income.

3-16-4. Exemptions.

(a) Exempt persons or entities. The following persons or entities are exempt from the duty to pay tax under this chapter but not the duty to collect and remit the tax levied hereby:

(1) The United States Government, the State of Colorado, its departments and institutions and their political subdivisions, including the city, when acting in their governmental capacities and performing governmental functions and activities,

and when the government's obligation is paid for directly to the licensee by a purchase card or a draft or warrant drawn on the government's account; and

(2) Religious, charitable and quasi-governmental organizations but only in the conduct of their regular religious, charitable and quasi-governmental capacities, only if each such organization has obtained an exempt organization license under section 3-2-12, "Exempt Institution License," B.R.C. 1981.

(3) An employee, otherwise subject to taxation under the provisions of this chapter, who performs services within the city and one (1) or more other municipalities for a single employer may be exempt from payment of the city's employee occupational privilege tax if both of the following conditions are met in each calendar month for which an exemption is claimed:

(A) The number of hours of services such employee performs in another municipality exceeds the number of hours of services performed in the city; and

(B) Such employee has actually paid to the municipality in which the majority of hours of services were performed an employee occupational privilege tax substantially the same as the one that would have been imposed under this chapter.

(b) Burden of Proof for Exemptions. The burden of proving that any entity or employee is exempt from payment of the occupational privilege tax under this section shall be on the entity or employee claiming such exemption, and such proof shall be by a preponderance of evidence.

(c) Limitations. Nothing contained in this chapter shall be construed to empower the city to levy and collect the tax hereby imposed upon any taxpayer not within the taxing power of the city under the laws of the United States or the State of Colorado.

3-16-5 Employer Liable for Tax.

Each employer shall pay the tax imposed in Subsection 3-16-3, B.R.C. 1981 on every one of its employees. Each employer shall collect the tax from its employees.

3-16-6 Taxes Collected are Held in Trust.

All sums of money paid by a person imposed by this chapter are public monies that are the property of the city. The person required to collect and remit such taxes shall hold such monies in trust for the sole use and benefit of the city until paying them to the city manager.

3-16-7 Licensing and Reporting Procedure.

(a) License Required. Every person with a duty to collect the tax imposed by this chapter shall obtain the license required by Section 3-2-11, "Sales and Use Tax License," B.R.C. 1981, to collect the tax and shall report such taxes collected on form prescribed by the city manager and remit such taxes to the city on or before the twentieth day of the month for the preceding month or months under report.

(b) Sale, Purchase and Transfer Requirements. Whenever a business entity that is required to be licensed under this chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new tax license.

(c) Revocation of License. The sales tax license may be revoked as provided in Section 3-2-13, "Revocation of License," B.R.C. 1981.

3-16-8 Maintenance and Preservation of Tax Returns, Reports, and Records.

(a) Records Required. The city manager may require any person to make such return, render such statement, or keep and furnish such records as the manager may deem sufficient and reasonable to demonstrate whether or not the person is liable under this chapter for payment or collection of the tax imposed hereby.

(b) Preservation of Records by Taxpayer. Any person required to make a return or file a report under this chapter shall preserve those reports as provided in Section 3-2-18, "Taxpayer Duty to Keep Records, Provide Information, and File Returns," B.R.C. 1981.

(c) Preservation of Records by City. The city manager shall maintain all reports and returns of taxes required under the chapter as provided in Section 3-2-20, "Preservation of Tax Returns and Reports," B.R.C. 1981.

3-16-9. - Interest and Penalties for Failure to File Tax Return or Pay Tax.

(a) Penalties. Penalties for failure of a person to collect the tax or to make a return and remit the correct amount of tax required by this chapter and procedures for enforcing such penalties are as prescribed in Section 3-2-22, "Penalties for Failure to File Tax Return or Pay Tax (Applies to Entire Title)," B.R.C. 1981.

(b) Interest. Interest on overpayments and refunds is as prescribed in Section 3-2-24, "No Interest on Overpayments and Refunds (Applies to Entire Title)," B.R.C. 1981.

3-16-10. - Refunds.

Refunds of taxes paid under this chapter are as prescribed in Section 3-2-23, "Refunds (Applies to Entire Title)," B.R.C. 1981.

3-16-11. - Enforcement of Tax Liability.

(a) First Lien. The tax imposed by this chapter, together with all interest and penalties is a first and prior lien on tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien, as provided in Subsection 3-2-27(c), "Tax Constitutes Lien," B.R.C. 1981.

(b) Enforcement Provisions. The provisions of Sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale of Business Subject to Lien," 3-2-30, "Certificate of Discharge of Lien," 3-2-31, "Jeopardy Assessment," 3-2-32, "Enforcing the Collection of Taxes Due (Applies to Entire Title)," 3-2-33, "Recovery of Unpaid Tax by Action at Law," 3-2-34, "City May Be a Party Defendant," 3-2-35, "Injunctive Relief," 3-2-36, "Obligations of Fiduciaries and Others," 3-2-37, "Violations of Tax Chapter," and 3-2-38, "Limitations," B.R.C. 1981, govern the authority of the city manager to collect the taxes, penalties, and interest imposed by this chapter.

3-16-12. - Duties and Powers of City Manager.

The city manager is authorized to administer the provisions of this chapter, and has all other duties and powers prescribed in Section 3-2-17, "Duties and Powers of City Manager," B.R.C. 1981. The city manager is authorized to adopt rules and regulations to interpret, implement, and enforce the provisions of this chapter,

Section 4. If a majority of all the votes cast at the election on the measure submitted are for the measure, the measure shall be deemed to have passed, and the City Council authorized to make amendments to the Boulder Revised Code, 1981, to implement this measure.

Section 5. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this ordinance.

Section 6. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the election for the city.

Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining

provisions of this ordinance. The tax established by this measure is intended to be authorized under any lawful means of taxation, including license taxation pursuant to city of Boulder Charter Section 122.

Section 8. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 9. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AMENDED, AND ORDERED PUBLISHED BY TITLE ONLY this 4th day of August, 2015.

_____
Mayor

Attest:

_____
City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this ____ day of _____ 2015.

_____
Mayor

Attest:

_____
City Clerk

ATTACHMENT B

CITY OF BOULDER
REQUESTED BACKGROUND INFORMATION FOR STUDY SESSION July 14, 2015

TO: Members of City Council

FROM: Jane S. Brautigam, City Manager
Tom Carr, City Attorney
David Gehr, Deputy City Attorney
Bob Eichem, Chief Financial Officer
Cheryl Pattelli, Director of Finance
Patrick Brown, Revenue and Licensing Officer

DATE: July 14, 2015

SUBJECT: Occupational Privilege Tax (OPT) aka Head Tax for Potential Ballot Item

I. PURPOSE

At the April 14, 2014 study session it was requested that staff provide background information prior to the City Council recess regarding the Occupational Privilege Tax, often referred to as a Head Tax. The topic will be one of the items discussed at the July 14 study session.

II. QUESTIONS FOR COUNCIL THAT ARE PROPOSED TO BE ASKED AT THE JULY 14 STUDY SESSION

Guidance is requested regarding, does council want staff to move forward with next steps to:

1. Place the question of an OPT on the November 2015 ballot?
2. If it is placed on the ballot, what should the rate of the tax be?
3. If it is placed on the ballot, what exemptions, if any should the city provide?
4. If it is placed on the ballot should the revenue received be used for general purposes of the city, or be dedicated for specific purposes?

III. BACKGROUND AND ANALYSIS

A. The Occupation Privilege Tax in Colorado

Municipalities in Colorado are not permitted to collect an income tax. That right is reserved for the state. Cities may impose an occupational privilege tax (OPT). This is often referred to as a head tax because of the way it is imposed. Specifically, the OPT, in its pure form, imposes a flat dollar amount on each employee working within the

boundaries of the municipality. In other words, it is a tax per head rather than a percent of income.

An OPT is currently in place in Denver, Aurora, Greenwood Village, Sheridan and Glendale. Table 1 illustrates the OPT rates paid by employees in their corresponding municipalities.

Table 1
Rate Paid by Employee

	City/County Denver	City of Aurora	Greenwood Village	Sheridan	Glendale
OPT Rate per Employee per Month	$5.75	$2.00	$2.00	$3.00	$5.00

In addition, the employer pays an equivalent tax for each employee they employ. For example, if an employer had a 100 employees and the OPT rate was $2 per month, the employer would deduct $2 per month from each employee's pay and match it with an employer contribution of $2 per employee, for a total OPT of $400 each month.

The OPT applies to anyone who works within the city. The OPT applies to all employees who are employed by the employer including contract employees.

None of the five entities have any type of mechanism that adjusts the rate up or down in future years. That is the rate does not change based on index of any kind.

Table 2 illustrates the total OPT that would be collected based on the tax rates in various cities. For illustrative purposes no exemptions are used.

Table 2
Example of Total Paid/ Month by Employee and Employer Based on Current Rates

	City/County Denver	City of Aurora	Greenwood Village	Sheridan	Glendale
# of Employees (for illustration only)	100	100	100	100	100
OPT Rate/Month	$5.75	$2.00	$2.00	$3.00	$5.00
Employee OPT/Month	$575	$200	$200	$300	$500
Employer OPT Match	$575	$200	$200	$300	$500
Total OPT Paid to City/Month	**$1,150**	**$400**	**$400**	**$600**	**$1,000**

The tax cannot be a disguised income tax therefore; the tax cannot vary based upon income level However, a minimum income threshold can be imposed where no employee

making less than a certain amount is charged the OPT (neither the employer nor employee would pay the tax).

Table 3 provides the minimum monthly income threshold in each municipality that has the OPT:

Table 3
Income Threshold per Month below Which No OPT is Collected

	City/County Denver	City of Aurora	Greenwood Village	Sheridan	Glendale
Threshold Amount per Month	$500	$250	$250	$500	$750

Several of the aforementioned municipalities have exemptions in place for governmental employers. This is due to a previous Colorado Supreme Court case. Therefore, in the charts below the amount paid is the employee amount only and there is no governmental employers match.

Table 4 provides a matrix of these exemptions:

Table 4
Exemptions in Cities that Currently have an OPT

Entity	Religious Exemption	Governmental Exemption	Charitable Organizations Exemption*
City/County Denver	Employee pays OPT Employer does not pay OPT	Employee pays OPT Employer does not pay OPT	Employee pays OPT Employer does not pay OPT
City of Aurora	Employee pays OPT Employer does not pay OPT	No exemption**	Employee pays OPT Employer does not pay OPT
Greenwood Village	Employee pays OPT Employer does not pay OPT	No exemption**	Employee pays OPT Employer does not pay OPT
Sheridan	No exemption	Employee pays OPT Employer does not pay OPT	Employee pays OPT Employer does not pay OPT
Glendale	No exemption	No exemption**	No exemption

*If a non-profit organization is qualified by the United States Internal Revenue Service as a tax exempt organization under section 501(c)(3) of the United States Internal Revenue Code then it would be considered a Charitable Organization under the City's municipal code.

** In checking with the three cities that say they do not exempt government it was found that the federal government never pays the employer match. For state and other local governments there is no clear line of what entity pays it and which do not. It seems to be

more based on what the entity decides to do. City of Boulder staff feel the city should pay the employer match if an OPT is placed on the ballot and was approved by the voters.

B. Implementation of Occupation Privilege Tax in Boulder

While updated information has not been garnered from local businesses, the Blue Ribbon Commission I report stated that previous examinations of this tax in the City of Boulder identified three significant concerns that have been voiced:

1. It would place Boulder businesses at a competitive disadvantage to those in the region.
2. Governments do not have to pay the employer portion and Boulder has a significant government employment base.
3. There would be a negative impact on non-profit organizations.

Staff has also received some input that the stronger the correlation between the tax and what it pays for makes the tax more palatable.

If the City Council decides to place some form of this item on the ballot in November of 2015 there will be various opportunities to obtain updated input (council correspondence, letters, public hearings, etc.). Staff will also ensure that this memo is distributed and made available to those who will have an interest in the issue. If the item moves forward staff will also include the community sustainability assessments and impacts.

To project how much the tax would generate annually staff used employment information provided by the Colorado Department of Local Affairs (DOLA) Demography Department. A second resource used was information from the April 2015 Boulder Economic Council Market Profile. There is a difference in the number of jobs (375) in Boulder when comparing the two sources. Mainly it seems to be due to the timing of the reports. Staff has also been made aware of comments made by DOLA staff in meetings that there are closer to 80,000 jobs within the City of Boulder. To date staff has not been able to track down the backup documentation that supports this statement.
Table 5 illustrates job data received from DOLA. The report is as of the end of the fourth quarter of 2013. The categories of religious and charitable are included in various categories (Health Care, Social Assistance, and Other Services).

Table 5
Employees in Boulder per Industry Category

City of Boulder Industry	Employees	% of Employees
Agriculture, Mining, Utilities	313	0.3%
Construction	1,566	1.7%
Manufacturing	9,650	10.3%
Wholesale	2,982	3.2%
Retail	7,927	8.4%
Transportation & Warehousing	877	0.9%

Information	5,570	5.9%
Finance and Insurance	3,352	3.6%
Real Estate	1,279	1.4%
Professional, Scientific & Tech	14,546	15.5%
Mgt. of Companies	567	0.6%
Admin, Support & Waste Mgmt	3,003	3.2%
Educational Services	1,456	1.5%
Health Care & Social Asst	8,463	9.0%
Arts, Entertainment, & Recreation	1,864	2.0%
Accommodation & Food Service	9,290	9.9%
Other Services	2,745	2.9%
Undefined	11	0.0%
Federal Gov	652	0.7%
State Gov	8,929	9.5%
Local Gov	8,933	9.5%
Total	**93,972**	**100.0%**

Table 6 illustrates the annual **estimated** revenue stream from OPT by various OPT rates (rate is per employee/employer per month). The estimated OPT annual revenue is adjusted for exemptions and non-compliance (businesses that are not licensed and/or do not remit their tax).

Staff has made revenue projections using the most conservative case. That is, there is no employer match included for government, religious or non-profits when revenue projections were made to place in Table 6. If Council would like to have staff add them back it can do so for the July 14 study session.

Table 6
Projected Revenue per Year at Various Rates

OPT Rate	# of Workers	Employee Paid OPT	Employer Paid OPT less Government-Match	Estimated Annual OPT Paid
$2	93,972	$1,849,366	$1,485,010	$3,414,356
$3	93,972	$2,774,049	$2,227,515	$5,121,534
$4	93,972	$3,698,731	$2,970,020	$6,828,713
$5	93,972	$4,623,414	$3,712,525	$8,535,891

Based on the research completed by city staff the percent of total employees for which the OPT tax was paid ranged from 79 to 86 percent, with an average of 82 percent. Based on this data the estimated OPT revenue per $1 is projected to range from $825,000 to $890,000 annually. The average would generate $850,000 annually.

IV. NEXT STEPS

Based on council guidance provided at the July 14 study session, and questions received over the council recess staff will bring back more detailed information as requested. As with all ballot questions for 2015, the date by which the final reading of any ballot issue needs to be done is September 1. Due to the way the ballot calendar falls this year it is two weeks later than in most years.

ATTACHMENTS

Attachment A: Potential Uses for Occupational Privilege Tax
Attachment B: Estimated OPT Revenue projection work papers

Attachment C

Transportation Uses for Occupational Privilege Tax Revenue

On July 14, 2015, members of the Boulder City Council discussed potential uses of revenue raised by a possible Occupational Privilege Tax (OPT) or "head tax". In this discussion, there was support for using the funds for Transportation, and specifically for the Community-wide Eco Pass program by some council members. The rationale for this concept is that Boulder is an employment center and approximately half of individuals that work in Boulder live outside of the city and that this situation results in additional demand for local and regional transportation infrastructure, programs and services.

The Community-wide Eco Pass Policy Advisory and Technical Advisory Committees have discussed the use of a head tax to fund the employee portion of a city or county-wide Eco Pass program. For the City of Boulder, it was estimated that an employee-only pass program would cost about $5.86m per year. This cost includes both the Eco Passes and the mid-range estimate for additional transit service needed to meet the new demand and provide higher transit level of service. It was estimated that the cost to replace the fare box for an employee-only program is $5.38m and the additional transit service needs could range from approximately $340,000 to $940,000, with a mid-point of $476,000.

Currently, the Advisory Committees in partnership with RTD are working with consultants to further analyze transit level of service throughout the County, pass pricing, and possible finance mechanisms. It is anticipated that this work will be concluded in early 2016. After completion of the analyses, the Advisory Committees will engage in public outreach and stakeholder process to communicate the results and investigate the feasibility of implementation with the RTD Board and staff.

If OPT revenues are not used to fund an employee-only program or a portion of a larger program that includes employees, residents and university students, there are a variety of other transportation uses. For example, revenue from a head tax could be used to improve regional and local transit service or provide new or expanded transportation demand management or first and final mile programs.

Community-Wide Eco Pass Program Option

Purpose of Feasibility Study

In 2014, The City of Boulder and Boulder County partnered on a study to assess the feasibility of a community-wide Eco Pass program. Specifically, the feasibility study was designed to:

1. Formulate strategic objectives for a community-wide EcoPass
2. Develop demographic and geographic implementation scenarios
3. Estimate induced demand and program costs under each scenario

4. Analyze program benefits; and
5. Address implementation opportunities and challenges

The report can be obtained at: http://www.bouldercounty.org/doc/transportation/ecopassfeasibilitystudy.pdf

In terms of the larger context, the City and the County jointly conducted this study to examine the induced demand and program costs of increasing access to the Eco Pass, which is known to be one of the most effective transportation demand management (TDM) tools to encourage residents, employees and students to use transit. A county- or city-wide Eco Pass program would assist with meeting transportation and sustainability goals of reducing single-occupant vehicle trips, increasing transit mode share and improving air quality. Two community-wide programs already exist within Boulder County in Lyons and Nederland.

Three scenarios and two geographic areas were included in the study to examine various ways in which a community-wide Eco Pass could be designed:

- Scenarios include:
  - All residents, employees, university students
  - Residents only
  - Employees only
- Each scenario was studied in two geographic contexts:
  - City of Boulder only
  - All of Boulder County including the City of Boulder

Key Findings of the Feasibility Study

Transit ridership: Induced transit ridership from a community-wide EcoPass in Boulder County was estimated based on national and international research on fare elasticity, using examples of transit systems that have converted from cash-fare to fare-free systems.

Based on the study, it is estimated that transit ridership would increase significantly with the implementation of a community-wide pass. For Boulder County, the transit ridership increase would range from 26 percent for the employee only scenario to 62 percent for a program that provides Eco Pass to all resident, employees and students. For the City of Boulder, which already has high transit use, the range of transit ridership increases is from 21 percent for the employee only scenario to 38% for a program that provides Eco Pass to all residents, employees and students.

Table 1: Estimated increase in Transit Ridership Based on Induced Demand

Scenarios	Boulder County	City of Boulder
Scenario 1 (All)	62%	38%
Scenario 2 (Residents only)	57%	27%
Scenario 3 (Employees only)	26%	21%

Program Cost:

The cost to implement the various community-wide Eco Pass scenarios for Boulder County ranges from $7m for the first year for an employee only program to $21.5m for the first year for a program that covers all residents, employees and students. For the City of Boulder, the scenarios costs for the first year of the program ranges from $5.8m for employees only to $15m to provide Eco Passes to all.

Under the current business, college and neighborhood Eco Pass program, RTD receives approximately $8.5m per year from participants in the city and county. The majority of the total Eco Pass contracts are paid by the University of Colorado through its student and faculty/staff Eco Pass programs.

For the feasibility study, the program costs of each scenario were estimated by adding the cost of replacing existing revenue generated by each scenario group with the fully allocated cost of providing additional transit service in order to prevent overcrowding from induced demand. Fully allocated costs include operations, maintenance, capital and administrative costs that would be needed as part of any transit service increase. This cost methodology would protect RTD from unfunded service cost increases during the first year of implementation.

Table 2: Estimated Cost of Scenarios

Scenario	2011 RTD Revenue	Induced Demand Cost*	Estimated Total Program Cost
Boulder County			
Scenario 1 (All)	$18,217,059	$3,265,178	**$21,482,237**
Scenario 2 (Residents)	$15,131,422	$2,525,129	**$17,656,551**
Scenarios 3 (Employees)	$6,500,889	$573,580	**$7,074,468**
City of Boulder			
Scenario 1 (All)	$14,185,543	$956,246	**$15,141,789**
Scenario 2 (Residents)	$8,447,519	$727,536	**$9,175,055**
Scenarios 3 (Employees)	$5,388,194	$476,758	**$5,864,952**

* based on mid-range estimate of induced demand cost

Program Benefits: A core benefit of implementing a community-wide EcoPass would be an increase in transit ridership. Depending on the scenario, a County-wide program would result in an annual ridership increase of between 2.2 million (26 percent increase) and 5.2 million (62 percent increase). For comparison, in 2011 annual transit ridership on all Boulder County bus routes was 8.45 million.

The increase in transit ridership would mean fewer trips by automobile in Boulder County. Depending on the scenario, this would equate to a reduction of Vehicle Miles Traveled (VMT) between 13 million and 40 million per year under a County-wide program. The reduced VMT would also mean a reduction of GHG emissions. Depending on the scenario, the approximate reduction in GHG emissions from a County-wide EcoPass would be between 5 million and 15 million kilograms per year.

A community-wide EcoPass program in Boulder County would increase the number of people eligible for an EcoPass by between 130,000 and 270,000 depending on the scenario. The cost of the bus fare can be a significant barrier to using transit for many people.

A community-wide EcoPass would improve access to jobs by reducing the cost of commuting. The cost of commuting can be a barrier to low-wage earners. For those who can use transit to get to work, the cost of commuting would essentially become free.

The average cost of housing plus transportation per household consumes about 47% of the median household income in the Boulder County. The average household in Boulder County spends about $13,800 annually on transportation ($12,600 in the City of Boulder). A community-wide EcoPass program could significantly reduce these household transportation costs.

Implementation Options: Depending on the scenario and the geographical boundaries, there are a variety of ways in which community Eco Pass could be implemented with potential funding options including property taxes, sales taxes, occupational privilege tax (head tax), university student fees, and transportation system user fees such as parking fees or other funding mechanisms.

Current Analysis on the Community-wide Eco Pass

Following the feasibility study, the City and County partnered in organizing two advisory committees to continue the work on designing a community-wide Eco Pass program that would be acceptable to RTD. The Policy Advisory Committee (PAC) is made up of elected officials and high-level staff from the County and the municipalities within Boulder County. The role of the PAC is to set policy guidelines and make decisions based on input and data analysis from the Technical Advisory Committee.

Currently PAC and TAC are in the process of hiring outside consultants for the purpose of estimating transit level of service within the County which will inform the equitable pricing of Eco Passes and further analysis on potential funding mechanisms based on the various scenarios and possible pricing levels. It is expected that the analysis will be complete in early 2016 and the PAC and TAC will then develop recommendations in partnership with RTD and present them to the community. If the recommendations are supported by RTD and the City Council, it would be possible to place any tax measures on the 2016 ballot depending on the identified finance mechanisms.

Staff was asked to estimate the cost of providing Eco Passes to middle and high school students in the City of Boulder as a specific sub-population for a community-wide Eco Pass. The 2014 feasibility study did not estimate costs for middle or high school students. However, based on the average cost of a pass per resident in a resident-only for the City of Boulder scenario, the approximate cost per middle school or high school student would be $90 per year. For the 4,956 middle and high school students, the estimated total cost of the program would be $446,000.

The following items are in process and will need to be completed before final costs can be determined and the program implemented. Due to the status of these items, they raise concerns that Council should be made aware of as the discussion of the tax occurs. If the tax is dedicated only to the Eco-pass program the following needs to be taken into consideration.

1. The Community-wide Eco Pass analysis is not anticipated to be completed until 2016.
2. The Advisory Committees have not identified which scenario is the most feasible in terms of which populations would be eligible.
3. The Advisory Committees have not identified any recommended funding strategies based on which scenario is moved forward.
4. While RTD is a part of the process, we have no idea if they are willing or able to implement any community-wide Eco Pass program recommended by the Advisory Committees.

Table 3. 2015 Transit Buy-Ups

2015 City of Boulder - Current Transit Buy-Ups										
City of Boulder Sales Tax										
Route	Buy-Up Description	Service Runs		Metrics*		Service Hours		Hourly $	Days/year	Total Cost
-	-	Day	Times	Boards/hour	Subsidy/ boarding					
HOP**	Total cost of service (excludes cost of fuel, and reimbursements)	Weekday Saturday Sunday	7:00a-11:00p 9:00a-11:00p 10:00a-6:00p	26.6	$2.87	30,020	x	$77.75		$2,334,055
JUMP	Buy-up 10-minute frequency from 7a-6p; 15-min from 6p-8p; and 15-min on Saturday 12p-6:30p	Weekday Saturday Sunday	5:00a-10:30p 7:30a-11:00p 8:30a-9:00p	16.3	$4.78	2,125 712 -	x x -	$96.18 $96.18 -		$204,402 $68,490
BOUND	Buy-up 10-minute frequency from 7a-7p; 15-min on Saturday 10a-6p	Weekday Saturday Sunday	5:30a-12:00a 7:00a-11:30p 9:00a-9:30p	46	$2.34	2,122 165 -	x x -	$96.18 $96.18 -		$204,046 $15,822
Stampede	30% Local Match for Stampede Service Buy-up funded by 2012-2017 TIP	Weekday Saturday Sunday	7:00a-7:00p - -	33.4	$2.03	General contribution				$5,318
									Total	$2,832,132

*According to RTD's 2013 Annual Performance Report

**Metrics based on Quarters 1 and 2 of 2015 HOP service

Table 4. Potential Transit Buy-Ups

2016+ Potential Transit Buy Ups											
Route	Buy-Up Description	Service Runs		Metrics*		Effectiveness	Service Hrs		Hourly $		Days/ Yr	Total Cost
		Direction	Time	Boards/hour	Subsidy/ boarding							
Mid-day FF Express to BTC	Mid-day service - Weekday 60 min frequency	WB EB	10am - 3pm 9am-3pm	33.5	$2.32	High - Reduced service as part of US 36 BRT service, proven demand	13	x	$ 123.95	x	255	$410,894
Mid-day Boulder Junction	Mid-day service - Weekday 30 min frequency	WB EB	10am - 3pm 9am-3pm	33.3**	$5.50**	High - Would help to demonstrate ridership demand at Boulder Junction	26	x	$ 123.95	x	255	$821,789
Increased AB -Boulder skyride freq	Increased weekday frequency from 1 hr to 30min	WB EB	7am-7pm 7am-7pm	21.1	$1.92	Low - RTD suggests long trip time makes buy-up more expensive	24	x	$ 123.95	x	255	$758,574
											TOTAL	$1,991,257
											Current & Potential Combined Total	*$4,823,389*

*Metrics are presented as existing route performance from RTDs 2013 Annual Performance Report

**Performance for current Route HX

Summarized input received via e-mail or website

Since the July 14 Study Session, city staff took steps to inform Boulder employers and employees that an Occupational Privilege Tax (OPT) that is also commonly called a Head Tax ballot issue is being considered by City Council. An informational **webpage** , with a frequently asked question list was posted and linked to the city's home page. An update email with a link to the new website was sent by city staff to over 200 contacts, primarily Boulder employers and employees, and local business organizations (Boulder Chamber, Latino Chamber, Boulder Economic Council, Boulder Tomorrow, Downtown Boulder Inc., Boulder Independent Business Alliance, Small Business Development Center, and Naturally Boulder). An update email was also sent to the members of the Downtown Management Commission, the University Hill Commercial Area Management Commission, the Boulder Junction Access Commission – Travel Demand Management, and the Boulder Junction Access District Commission – Parking. Many of the business organizations shared the information with their membership.

Comments that have been received are summarized below. Since there is not yet a proposed ordinance, broad outreach has not been conducted with Boulder residents and employees. However, e-mails and other forms of input have been received by Council and staff.

On July 24, city staff from Finance, Transportation and Economic Vitality met with the leadership of the Boulder Chamber and the Boulder Economic Council. The purpose of this meeting was for city staff to provide background information on the head tax proposal and updates on the current process, and to listen to feedback, questions, and concerns.

Key themes that city staff has heard since July 14, primarily from Boulder employers and business organizations include:

- The November 2015 ballot is too soon. It does not allow enough time for adequate research, public outreach and comment, and analysis of the best revenue uses. The business community wants to have a constructive conversation with the city but it is not possible in the current timeframe.
- Business growth has benefited Boulder in numerous ways: increased tax revenue, jobs for Boulder residents, and added value to Boulder as a brand and city.
- The only way the tax would be supported is if the revenues went to directly benefit Boulder employers and employees (EcoPasses and improved transit to Boulder from other cities were most often mentioned).
- Some question if it is clearly understood how much revenue the tax would generate.
- A 2005 study by CU's Business Research Division found that head taxes would affect lower and middle income employees the most.
- This could be a tipping point for businesses to consider leaving Boulder, following other policy decisions related to height limits, linkage fees, and energy/waste reduction.
- The name "Occupational Privilege Tax" implies that it is a privilege to work in Boulder.