ORDINANCE NO. 8065

(Short-Term Rental Tax)

AN EMERGENCY ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE SPECIAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2015, THE QUESTION OF WHETHER THE CITY OF BOULDER TAXES BE INCREASED BY UP TO FOUR HUNDRED THOUSAND DOLLARS ($400,000.00) ANNUALLY (IN THE FIRST FULL FISCAL YEAR) AND BY WHATEVER AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY THE IMPOSITION OF A TAX ON SHORT-TERM RENTALS NOT ALREADY TAXED AS HOTEL, MOTEL OR OTHER PUBLIC ACCOMODATIONS, TO FUND ADMINISTRATION, ENFORCEMENT AND THE CREATION OF ADDITIONAL AFFORDABLE HOUSING AND GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY EARNINGS RELATING TO THIS TAX NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH RELATED DETAILS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A municipal coordinated election will be held in the City of Boulder, county of Boulder and state of Colorado, on Tuesday, November 3, 2015, between the hours of 7 a.m. and 7 p.m.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of authorizing a short-term rental tax on the lease or rental of dwelling units for periods of less than thirty days and spend the revenues generated from such tax notwithstanding any state revenue or expenditure limitations.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the measure:

BALLOT QUESTION NO. ___

SHORT-TERM RENTAL TAX

SHALL CITY OF BOULDER TAXES BE INCREASED BY UP TO $400,000.00 ANNUALLY (IN THE FIRST FULL FISCAL YEAR) AND BY WHATEVER AMOUNTS AS MAY BE COLLECTED ANNUALLY THEREAFTER BY THE IMPOSITION OF A SHORT-TERM RENTAL TAX ON EACH LEASE OR RENTAL OF ANY DWELLING UNIT, NOT ALREADY TAXED AS A HOTEL, MOTEL OR OTHER PUBLIC ACCOMMODATION IN THE AMOUNT OF SEVEN AND ONE-HALF PERCENT, TO FUND ADMINISTRATION, ENFORCEMENT AND ALL OTHER REASONABLE EXPENSES ASSOCIATED WITH ADMINISTERING THE SHORT-TERM RENTAL PROGRAM WITH ANY ADDITIONAL FUNDS GOING TO CREATE AFFORDABLE HOUSING FROM JANUARY 1, 2016;

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 4. If such ballot question is approved by the voters, the following Chapter 3-15, "Short-Term Rental Tax," B.R.C. 1981, shall be adopted by the City Council effective January 1, 2016:

Chapter 15 Short-Term Rental Tax

3-15-1. - Legislative Intent.

The city council intends that every person who, for consideration, leases or rents any dwelling unit in the city for lodging purposes, other than a person subject to the provisions of Chapter 3-3 "Public Accommodations Tax," B.R.C. 1981, shall pay, and every person who furnishes for lease or rental any such dwelling unit shall collect, the tax imposed by this chapter. The purpose of this tax is to level the playing field for short-term rentals by imposing a tax on the rental of dwelling units in private residences in an amount equal to that paid by hotels, motels and other public accommodations. It is council's intent that this program be self-sufficient. Proceeds from the tax will first be used to fund enforcement, administration and all other reasonable expenses of the short-term rental regulatory program. The conversion of residential dwelling units into short-term rentals can adversely affect the sully of affordable housing in Boulder. Accordingly, after administration expenses are met, any additional funds shall be placed in the city's affordable housing fund.

3-15-2. - Imposition and Rate of Tax.

There is and shall be paid and collected an excise tax of seven and one-half percent on the price paid for the leasing or rental of any dwelling unit for a period of thirty days or less. This tax does not apply to any person subject to Chapter 3-3 "Public Accommodations Tax," B.R.C. 1981.

3-15-3. - Liability for Tax.

(a) No lessee or renter of a dwelling unit, for any period of thirty days or less shall fail to pay, and no lessor or renter of such dwelling shall fail to collect, the tax levied by this chapter.

(b) The burden of proving that any transaction is not subject to the tax imposed by this chapter is upon the person upon whom the duty to collect the tax is imposed.

3-15-4. - Taxes Collected Are Held in Trust.

All sums of money paid by a person who leases or rents any dwelling unit as the short-term rental tax imposed by this chapter are public monies that are the property of the city. The person required to collect and remit the short-term rental tax shall hold such monies in trust for the sole use and benefit of the city until paying them to the city manager.

3-15-5. - Exempt Transactions.

The following entities and transactions are exempt from the duty to pay tax under this chapter but not the duty to collect and remit the tax levied hereby:

(a) The United States Government, the State of Colorado, its departments and institutions and the political subdivisions thereof 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

(b) 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, and furnishes the exempt tax license to the person who rents or leases a dwelling unit to the organization, and only if the organization's obligations have been paid for directly by it to the short-term rental tax licensee without reimbursement therefor.

(c) Burden of Proof for Exemptions. The burden of proving that any person or entity is exempt from payment of the short-term rental tax under this section shall be on the person or entity claiming such exemption, and such proof shall be by a preponderance of evidence.

(d) 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.

3-15-6. - Licensing and Reporting Procedure.

(a) Every person with a duty to collect the tax imposed by this chapter shall obtain a license to collect the tax and shall report such taxes collected on forms 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) The city manager shall issue a short-term rental tax license to persons who pay the fee prescribed by section 4-20-38, "Tax License Fees," B.R.C. 1981, and complete an application therefor stating the name and address of the person and the business and such other information as the manager may require. The license shall be numbered, show the name, residence, place and character of the business of the license of the licensee, and be conspicuously posted in the place of business for which it is issued. No short-term rental tax license is transferable. The manager shall not issue a short-term rental tax license until the zoning administrator has verified that the location of the business complies with the provisions of title 9, "Land Use Code," B.R.C. 1981. The license is effective until December 31 of the year of issue, unless sooner revoked.

(c) The license is valid so long as the business remains in continuous operation or the license is canceled by the licensee or revoked by the City.

(d) 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 short-term rental tax license.

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

3-15-7. - Maintenance and Preservation of Tax Returns, Reports and Records.

(a) 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) 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) 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.

3-15-8. - Interest and Penalties for Failure to File Tax Return or Pay Tax.

(a) Penalties for failure of a person to collect the short-term rental 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 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.

3-15-9. - 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.

3-15-10. - Enforcement of Tax Liability.

(a) The short-term rental tax imposed by this chapter, together with all interest and penalties pertaining thereto, 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), B.R.C. 1981.

(b) 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.

3-15-11. - 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.

3-15-12. - City Employee Conflicts of Interest Prohibited.

No deputy, agent, clerk or other officer or employee of the City engaged in any activity governed by this chapter shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding a short-term rental tax license from the City for the purpose, directly or indirectly, of preparing tax returns or reports required by the City, the State of Colorado, its political subdivisions, any other state or the United States, or accept any employment for the purpose of advising, preparing materials or data or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the City, the State of Colorado, its political subdivisions, any other state, its political subdivisions or the United States.

Section 5. If a majority of all the votes cast at the election on the measure submitted shall be for the measure, the measure shall be deemed to have passed and shall be effective upon passage, and it shall be lawful for the City Council to provide for the amendment of its tax code in accordance with the measure approved.

Section 6. 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, and all contrary provisions of the statutes of the state of Colorado are hereby superseded.

Section 7. 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 8. 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.

Section 9. 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 10. The 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.

Section 11. The City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, or property. The City Council amended the ordinance on final reading. This ordinance includes a ballot measure. Emergency passage is necessary to allow time for this matter to be placed on the November 3, 2015 ballot.

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 AS AN EMERGENCY MEASURE BY TWO-THIRDS OF COUNCIL MEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 1st day of September 2015.

Mayor

Attest:

City Clerk

K:\CCCO\o-8065 as passed-2391.doc