CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: September 1, 2015

AGENDA TITLE: Second reading and consideration of a motion to adopt by emergency, Ordinance No. 8065 submitting to the electors of the City of Boulder at the General Municipal Coordinated Election to be held on Tuesday, November 3, 2015, the question of, shall City of Boulder taxes be increased by up to $400 thousand 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 accommodations, 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.

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Bob Eichem, Chief Financial Officer
David Driskell, Executive Director of Community Planning and Sustainability
Maureen Rait, Executive Director of Public Works
Cheryl. Pattelli, Director of Finance
Alisa Lewis, City Clerk
Cheryl Pattelli, Director of Finance
Pat Brown, Revenue and Licensing Officer
Peggy Bunzli, Budget Officer
Elena Lazarevska, Senior Financial Analyst

EXECUTIVE SUMMARY

In preparation for the discussion of this agenda item, city council members discussed the regulation and taxation of short-term rentals (STR). The regulatory aspects and fee charges have been considered and discussed by city council under a separate timeline. (first discussed at the June 2, 2014 city council meeting). At the August 27, 2015 council meeting, the council discussed and gave direction regarding both. Action on the tax aspect was continued until September 1 for final action. This agenda memo considers the taxation of short-term rental transactions. This topic was discussed as a potential 2015 ballot item in four previous meetings during 2015. The first was on February 10, the second April 14, the third was on July 14, and the fourth was on August 27. At the April meeting, council expressed interest in learning more about the possibility of placing a short-term rental tax on the November 3, 2015 ballot. The first reading occurred on August 4, 2015.

The discussion by council at the April 14 study session indicated there was interest in developing a new category of taxation in the Boulder tax code. The tax would be the same rate as the accommodations tax. The basis for the distinction of the short-term rental tax and the accommodations tax is to recognize that short-term rentals are based on a different business model and usually occur in residential style dwellings rather than commercial type buildings. Though these types of transactions have similarities to the hotel and motel accommodations tax, they are expected to require more intense administration and compliance efforts. These transactions are part of a distinct and separate part of a new business segment sometimes called the sharing economy.

The projected income for the first full year of compliance ranges from $150 to $400 thousand. The range is large due to not knowing for certain, at this time, what activity the regulatory allowance may allow and how many hosts will obtain licenses. Full compliance would most likely not occur until 2017 when the education program is more effective. For Taxpayer Bill of Rights (TABOR) purposes the amount for first reading is set at the higher end. There is no penalty under TABOR if the revenue projection is not met.

STAFF RECOMMENDATION

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

Motion to adopt by emergency, Ordinance No. 8065 submitting to the registered electors of the City of Boulder, at the general municipal coordinated election to be held on November 3, 2015, the question of, shall City of Boulder taxes be increased by up to $400 thousand 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 accommodations, to fund administration,

enforcement and all other costs related to a short-term rental regulatory program and with any remaining funds provide for 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.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic:
  - A new tax on short-term rentals would create an incremental economic impact equal to the amount of the tax increase approved by the voters and collected by staff. Any increase would be charged on all applicable transactions.
- Environmental:
  - The acts of placing or not placing a tax on the ballot will not have a direct impact on the environment.
- Social**:**
  - The acts of placing or not placing a tax on the ballot will not have a direct impact on the social aspects of the city. The results of the tax are expected to have impacts on available affordable housing for long term rentals.

OTHER IMPACTS

- Fiscal: The new revenue collected would provide funding for new costs incurred for administration and compliance with the short-term rental requirements. This fits the long range fiscal planning model of the city in which new costs for new or expanded programs and services are covered by new revenues. The actual revenue collected will depend on the scope of authorization of the regulatory ordinance. A more thorough discussion of this topic can be found below in the analysis section of the agenda memo.

- Staff time: The staff time needed to complete the background work for ballot items is included within the departmental work plans. If the item is placed on the ballot and is successful additional staff will be needed for implementation and ongoing services provided by the program. Once the scope of the tax is known, the incremental costs can be specifically determined. If the tax is placed on the ballot and passed by the voters, a supplemental appropriation would be brought before Council for consideration and the costs would be specifically identified in the accompanying agenda memo.

PUBLIC FEEDBACK

There have been numerous e-mails submitted to Council Correspondence in regards to the taxation or lack of taxation of such businesses. Staff has received various inquiries

regarding when council study sessions or meetings will be held. There have also been several letters to the editors both for and against such transactions. A public hearing was held on August. 27.

BACKGROUND AND ANALYSIS

The following link leads to the February 10 agenda packet when 2015 ballot items were considered by the City Council.
https://documents.bouldercolorado.gov/WebLink8/0/doc/127865/Electronic.aspx

As follow up to the February 18 meeting, more specific ballot topics were considered at the April 14 study session. The meeting and what was discussed at the study session can be found on the following video link labeled as agenda item number 2.
http://boulderco.granicus.com/MediaPlayer.php?view_id=2&clip_id=433

As currently being considered, a short-term rental tax would be levied on the rental amount charged for short-term rental accommodations of less than thirty days. As was discussed at previous meetings, this type of rental methodology comes from a new and developing economy market segment and is often called the sharing economy. Other types of sharing services that are becoming more common are vehicle and equipment sharing. The sharing model for STRs does not readily fit into the current definition of the accommodations tax and it is a unique and different type of economic transaction than a hotel or motel stay.

These types of transactions are occurring illegally in many neighborhoods in the city and continue to proliferate. They are advertised in various forms of media and often on web sites. One of the most perplexing issues has been that if the city taxes these transactions the city will be taxing something that is illegal within the city and the city has not done this in the past.

At the February 10 study session there appeared to be interest by council in creating a new type of tax to cover these types of transactions that are occurring in the new service sharing economy. The tax rate would be the same rate as the public accommodations tax rate. While this does not address the legal question of running this type of business it does make it a taxable transaction. As was discussed at the study session, staff feels it would be best to consider having a separate type of tax for this new and fast evolving business segment. There are significant administrative differences in implementing and gaining ongoing compliance for this type of transaction if it is taxed. Therefore, staff feels it would be best to separate the taxation of these types of transactions from the accommodations tax transactions. Since this would be a new type of tax it would require voter approval.

Based on initial projections, it is expected that if this ballot item would pass the tax revenues will range from $150,000 to $400,000 during the first full year of compliance. The actual amount of revenues collected and new costs incurred will be impacted by the tax model that is placed on the ballot. That is, if the ordinance authorizing such rentals

would be narrow in scope, such as owner occupied only, then new taxes collected would be toward the lower end of the projected range. If it allows such rentals by all forms of ownership then the revenue will be higher. On the expenditure side it is expected that if the scope is narrow there will be less administrative costs in the licensing area. However, it is expected that enforcement costs may still be higher due to continued illegal operations that would most likely occur. If the tax is placed on the ballot and passed staff will do everything possible to have educational materials, the software and administrative systems in place and operational by January 1. At the same time, it is reasonable to expect that the full impact would not be known until later in 2016. This is the pattern that developed when medical and then recreational marijuana started up and this new tax will have new start up similarities for tax, licensing and enforcement. That would mean that the first full year of major compliance would occur in 2017.

From conversations held with other entities that collect such a tax it is evident it will be more labor intensive and have higher administrative and collection costs than other taxes currently administered by the City. Until actual experience for collecting the tax occurs we will not know if there will be revenues in excess of costs incurred for administering the regulatory and administrative programs.

Based on information gathered from Colorado mountain communities that tax vacation rentals, the indications are the administrative burden for collecting the tax will be significantly more than the administration for current tax programs. In discussions held with the City and County of San Francisco staff stated they have had difficulty in finding out detailed information from the major companies that do short-term rentals for individuals. Information has been reported in lump sums from all places with no breakout by address, location or amounts. Therefore, it is extremely difficult to audit or to determine if a specific location has paid the tax. Recently, a major company specializing in short-term rentals agreed to provide more detailed information and has notified their customers of this change. To view the change in terms of service, please use the following link:

https://www.airbnb.com/terms?eluid=1&euid=66b6a259-38e8-60f6-7bcb-0fd2707f16e5.

Indications are this change is for all of their hosts and guests, regardless of jurisdiction.

It is unknown at this time whether revenues will exceed new costs. It is also unknown at this time what the actual new costs will be, or if there will be unanticipated costs incurred to gain compliance. Staff recommends that if this item is placed on the ballot and if it were successful, no ongoing sharing percentage of these new revenues be considered until there is a multi-year history of revenues collected and costs incurred by the city for this new program. An alternative would be to wait until after the full calendar year is completed so it can be determined if revenues did exceed expenditures and if there are any revenues that could be shared.

The proposed ballot measure would limit the use of short-term rental tax revenue “to fund administration, enforcement and the creation of additional affordable housing.” At the

August 27, 2015 public hearing, council directed staff to expand the acceptable use to include any other expenses reasonably related to the short-term rental program. The version of the ordinance in attachment B includes language expanding the allowed uses for short-term rental tax revenue. This version also includes language for emergency adoption, if council decides to amend the ordinance.

NEXT STEPS

If this proposed ballot issue is passed on final reading it will be considered by the voters at the November 3, 2015 election.

ATTACHMENTS

Attachment A – Proposed Ordinance
Attachment B - Amended Ordinance with Emergency Provision

ORDINANCE NO. 8065

(Short-Term Rental Tax)

AN 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 the creation of additional 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 and administration 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.

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 1st day of September 2015.

_____
Mayor

Attest:

_____
City Clerk

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 ~~AND THE CREATION OF ADDITIONAL~~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, ~~and~~ 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.

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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.

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Mayor

Attest:

_____
City Clerk