

RESOLUTION 2022 - 98

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY TO APPROVE AND AUTHORIZE A BALLOT QUESTION FOR THE NOVEMBER 2022 GENERAL ELECTION FOR THE PURPOSE OF PROPOSING AN INCREASE OF 1.5% TO THE EXISTING COUNTYWIDE SALES TAX RATE TO ADDRESS CRITICAL AND URGENT NEEDS OF ARCHULETA COUNTY AS MORE PARTICULARLY DESCRIBED HEREIN, THE SHARING OF REVENUES WITH THE TOWN OF PAGOSA SPRINGS, AND A VOTER-APPROVED REVENUE CHANGE

WHEREAS, Archuleta County (the “County”) is a duly organized county political subdivision of the State of Colorado under the Constitution and laws of the State of Colorado pursuant to C.R.S. §30-5-112; and,

WHEREAS, Article 2, Title 29 of the Colorado Revised Statutes, as amended, authorizes the County to levy an increase in the countywide sales tax rate upon approval of the majority of qualified registered electors of the County voting on such proposal at an election conducted and held according to Colorado law; and,

WHEREAS, on April 7, 1988, the Archuleta County Board of County Commissioners (the “Board”) adopted Resolution 1988-34 authorizing a ballot question to impose a countywide sales tax rate of four percent (4%), which rate was approved by a majority of the qualified registered electors voting on such proposal at a special election conducted and held according to Colorado law on May 10, 1988; and,

WHEREAS, there has been no increase in the countywide sales tax rate since the election in May 1988, more than thirty years ago; and,

WHEREAS, during that same time frame, the population of the County has grown from around 5,000 in 1988 to just under 14,000 in 2022, which equates to a 180% increase; and,

WHEREAS, also during that same time frame, the cost of maintaining the roads in the County, which includes 327 miles of road, of which 40 miles are paved or chip-sealed, has increased significantly; and,

WHEREAS, in addition, the growth of tourism visits to the County has increased significantly from 1988 to 2022; and,

WHEREAS, furthermore, the cost of providing services to the citizens of the County has increased significantly over the same period of time; and,

WHEREAS, the Board has determined that the maintenance, repair and safety of roads, bridges and other infrastructure in the County are priorities for the residents of the

County, and that it is in the public interest to provide for the maintenance, repair and safety of those roads, bridges and other infrastructure; and,

WHEREAS, the growth of population in and tourism to Archuleta County has significantly impacted County roads, bridges and other infrastructure, to a point where the County no longer has the financial resources to maintain such roads, bridges and other infrastructure at an acceptable level; and,

WHEREAS, the County is in need of maintaining current capital projects and improvements and constructing future capital projects and improvements, including but not limited to County facilities and the County landfill, all to meet the growing population of Archuleta County; and,

WHEREAS, the County is in need of additional resources to provide current services to the growing population of Archuleta County in an extremely tight labor market so as to retain its current employees as well as to attract new talent, and to provide for additional services required by state law; and,

WHEREAS, the Board believes it is important to find a sustainable funding source to address the safety, functionality and longevity of County roads, bridges and other infrastructure, to maintain and construct current and future County capital projects and improvements, and to sustain and expand services to the citizens of Archuleta County; and,

WHEREAS, the Board finds that the imposition of a sales tax increase of one and a half percent (1.5%) of taxable transactions (which represents a 1 and ½ cent increase on each one dollar purchase) will ensure that Archuleta County has the funding it needs to provide suitable roads, bridges and other infrastructure, as well as address other significant needs of the County and its citizens as stated herein; and,

WHEREAS, the Board finds that the imposition of a sales tax increase of one and a half percent (1.5%) of taxable transactions will promote the health, safety and welfare of the citizens of the County; and,

WHEREAS, pursuant to Article X, Section 20 of the Colorado Constitution, the increase of any tax requires voter approval, which may be referred to an election held on the first Tuesday of November of even-numbered years; and

WHEREAS, the Board desires to refer to the registered electors of the County a proposal for an increase to the countywide sales tax for the purposes set forth herein at the next election on November 8, 2022, and such election date is not less than 30 and is within the next succeeding 120 days after the adoption of this Resolution; and

WHEREAS, pursuant to C.R.S. §1-5-203(3), the Board must certify ballot contents to the Archuleta County Clerk and Recorder for said November 8, 2022, election no later than September 9, 2022.

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Kristy Archuleta
Archuleta County

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO THAT:

GENERAL PROVISIONS

1. Purpose of this Resolution. The purpose of this Resolution is to authorize the submission of a ballot question and, upon the approval of a majority of the eligible electors voting on such proposal at the November 2022 General Election, to enact, and, therefore, levy and impose an increase in the countywide sales tax rate of one and a half percent (1.5%) upon the sale at retail of tangible personal property and the furnishing of certain services in the County (the "sales tax"), all of the foregoing being in accordance with the provisions of Article 2 of Title 29, C.R.S., which provisions are incorporated herein by this reference.
2. Effective Date and Duration of Sales Tax Increase. If approved by a majority of the eligible electors voting thereon in the November 2022 General Election, the countywide sales tax rate increase proposed in this Resolution and in the ballot initiative shall become effective January 1, 2023, and shall be in effect throughout the incorporated and unincorporated portions of Archuleta County in perpetuity and shall not expire, unless and until repealed or otherwise revised by a vote of the citizens of the County.
 - a. Notwithstanding the provisions of Section 2 hereof, so long as there are outstanding financial obligations of the County which are secured in whole or in part by all or any portion of said sales tax, said taxes shall not be repealed, nor shall the application of the proceeds from said taxes be changed, if such repeal or change would adversely affect the security for said financial obligations.
3. Statutory Definitions Incorporated/Specific Definition of Countywide. The definitions of the words contained herein shall be as set forth in C.R.S. §§ 39-26-102, 39-26-201 and 39-26-701, which definitions are incorporated by reference into this Resolution as if fully set forth herein. The term "countywide", as used in this Resolution includes all incorporated areas (i.e., municipalities, including, but not limited to, all statutory cities and towns and all home rule cities and towns) and unincorporated areas within the County.

SPECIFIC PROVISIONS RELATING TO THE SALES TAX

4. Personal Property and Services Taxed. Upon the approval of a majority of the eligible electors in the November 2022 General Election, there shall be enacted and, therefore, levied and imposed, and there shall be collected and paid, an increase in the existing countywide sales tax rate of one and a half percent (1.5%) on the gross receipts upon the sale of tangible personal property at retail and the furnishing of certain services as

provided in C.R.S. § 29-2-105(1)(d), as amended, upon all taxable transactions in the County. The sale of tangible personal property and services taxable pursuant to this Resolution shall be the same as the sale of tangible personal property and services taxable pursuant to C.R.S. § 39-26-104, except as otherwise provided in C.R.S. § 29-2-105(1)(d). For purposes of this Resolution, which is being enacted in accordance with Title 29, Article 2 of the Colorado Revised Statutes, all retail sales are sourced as specified in C.R.S. § 39-26-104(3).

5. Adoption of State Rules and Regulations. The imposition of this increase in the tax on the sale at retail of tangible personal property and the furnishing of certain services subject to this tax shall be in accordance with the schedule set forth in the rules and regulations of the Colorado Department of Revenue, and in accordance with any regulations which may be enacted by separate written resolution.

6. Mobile Telecommunications Services. Imposition of a sales tax pursuant to C.R.S. § 39-26-104(1)(c) on a mobile telecommunications service shall be imposed in accordance with the provisions of the Mobile Telecommunications Sourcing Act, 42 U.S.C. §§ 116 to 126 as amended, and pursuant to Section 117(b) of the Act, mobile telecommunications service taxable by the County on or after August 1, 2002, may be subject to any sales tax or other charge imposed by the County on the service only if the customer's place of primary use is within the geographical boundaries of the County.

7. Sales Tax Exemptions. The incidents subject to sales tax shall not include the following:
 - a. The amount of any sales or use tax imposed by Part 7 of Article 26 of Title 39 of the Colorado Revised Statutes.

 - b. The sale of construction and building materials, as the term is used in C.R.S. § 29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is not required to be paid.

 - c. The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by the subsequent statutory or home rule city and county, city, or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city, or town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city, or town. The

following provision shall apply in defining the applicability of its higher rate to the sales tax ordinance or resolution of any statutory or home rule city, town, city and county, or county which provides a higher rate of taxation on prepared food or food for immediate consumption than its general rate of taxation: Prepared food or food for immediate consumption shall exclude any food for domestic home consumption.

- d. The sale of food purchased with food stamps. For purposes of this provision, the term “food” shall have the same meaning as provided in 7 U.S.C. § 2012(g), as such section existed on October 1, 1987, or as thereafter amended.
 - e. The sale of food purchased with funds provided by the special supplemental food program for women, infants and children, 42 U.S.C. § 1786. For the purposes of this provision, “food” shall have the same meaning as provided in 42 U.S.C. § 1786, as such section existed on October 1, 1987, or as thereafter amended.
 - f. “Food” as used herein is defined as set forth in C.R.S. § 39-26-102(4.5), as amended.
 - g. The sale of cigarettes pursuant to C.R.S. § 29-2-105(9).
 - h. None of the sale tax exemptions allowed for in C.R.S. § 29-2-501(1)(d) are adopted by this Resolution.
8. Nonresident Exemptions. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the subject sales tax increase when such sales meet both of the following conditions:
- a. The purchaser is a nonresident of or has his or her principal place of business outside the County; and
 - b. Such tangible personal property is registered or required to be registered outside the limits of the County under the laws of Colorado.
9. Place of Sale. For purposes of this Resolution, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the County or to a common carrier for delivery to a destination outside the limits of the County. The gross receipts from such sales shall include delivery charges, which such charges are subject to the sales and use tax of the State of Colorado imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the County, or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax increase imposed by this Resolution shall be determined by

the provisions of Article 26 of Title 39, C.R.S. and by the rules and regulations promulgated by the Colorado Department of Revenue.

10. Sales Tax License. No separate County sales tax license shall be required. Any person engaging in the business of selling tangible personal property at retail or furnishing certain services as herein specified shall annually obtain and hold a State license as required by C.R.S. § 39-26-103.
11. Collection, Administration and Enforcement. The collection, administration and enforcement of the sales tax increase imposed by this Resolution shall be performed by the Executive Director of the Colorado Department of Revenue in the same manner as the collection, administration and enforcement of the Colorado State sales tax. The provisions of Article 26 of Title 39, C.R.S. and all rules and regulations promulgated by the Executive Director of the Department of Revenue thereunder are incorporated herein by this reference and shall govern the collection, administration and enforcement of the sales tax increase imposed by this Resolution.

If the sales tax increase proposed by this Resolution is approved by the electorate at the General Election in November 2022, the County Clerk and Recorder shall send notice of said adoption to, and make a request of, the Executive Director of the Department of Revenue to administer, collect and distribute the sales tax increase hereby imposed, pursuant to C.R.S. § 29-2-106. The Board and the Clerk and Recorder, at the time of making such a request, shall provide the following documents to the Executive Director of the Department of Revenue:

- a. A copy of this Resolution, certified by the Clerk and Recorder; and,
- b. Affidavits of Publication of this Resolution, as provided herein; and,
- c. An abstract of election results, certified as to the approval of the sales tax increase by a majority of the registered, qualified electors of Archuleta County voting thereon.

In the event the Executive Director of the Department of Revenue fails or refuses to collect the sales tax increase imposed by this Resolution, the Board shall be authorized to provide for the collection, administration or enforcement of such sales tax increase to the extent permitted by law or to amend this Resolution to comply with the requirements of the Department of Revenue.

12. Distribution of Proceeds of Sales Tax Rate Increase. Pursuant to C.R.S. § 29-2-104(2), the County shall receive 50% of the net revenues generated by this sales tax increase and the Town of Pagosa Springs shall also receive 50% of the net revenues generated.

13. Use by Archuleta County. The Board shall direct the utilization of the revenues of the sales tax increase proposed by this Resolution solely as described in the ballot measure referred to the eligible voters of the County by this Resolution.

a. Revenue generated from this sales tax increase shall be used for the following purposes:

i. At least 50% of the revenues generated to the design, engineering, maintenance, improvement, construction and/or reconstruction of the roads, bridges and other infrastructure that has been accepted into the County road system by the Board, along with such equipment, land and materials needed to perform such design, engineering, maintenance, improvement, construction and/or reconstruction.

ii. The remainder of the revenues generated will be divided between the following categories:

1) To the design, engineering, maintenance, improvement, remodeling, construction and/or reconstruction of current and future County capital projects and improvements including but not limited to County facilities and the County landfill, along with such equipment and materials needed for such design, engineering, maintenance, improvement, remodeling, construction and/or reconstruction.

2) To the growing cost of providing current services to the citizens of the County, including but not limited to County employees' salaries and benefits, and the expansion of new services, which are or could be required by state law.

b. Interest generated from the revenues of the sales tax increase shall be used for the purposes set forth in this Resolution.

14. Use by Town of Pagosa Springs. The Town of Pagosa Springs Town Council shall direct the utilization of the revenues of the sales tax increase proposed by this Resolution solely as described in the ballot measure referred to the eligible voters of the County by this Resolution.

a. Revenue generated from this sales tax increase shall be used for the following purposes:

i. At least 50% of the revenues generated to the design, engineering, maintenance, improvement, construction and/or reconstruction of the roads, bridges and other infrastructure that are the responsibility of the Town of the Pagosa Springs along with such equipment, land and materials needed to perform such design, engineering, maintenance, improvement, construction and/or reconstruction.

ii. The remainder of the revenues generated will be divided between the following categories:

- 1) To the design, engineering, maintenance, improvement, remodeling, construction and/or reconstruction of current and future Town capital projects and improvements including, but not limited to, Town facilities along with such land, equipment and materials needed for such design, engineering, maintenance, improvement, remodeling, construction and/or reconstruction.
- 2) To the growing cost of providing current services to the citizens of the Town and the expansion of new services, which are or could be required by state law.

b. Interest generated from the revenues of the sales tax increase shall be used for the purposes set forth in this Resolution.

15. Voter-Approved Revenue Change. For purposes of Colo. Const., Art. X Section 20, the receipt and expenditure of revenues of the sales tax increase together with earnings on the investment of the proceeds of the sales tax increase shall constitute a voter-approved revenue change.

ELECTION REQUIREMENTS

16. Submission to Electors. Pursuant to C.R.S. § 29-2-104(3), this sales tax increase proposal as set forth in this Resolution shall be referred to the eligible electors of the County at the General Election to be held Tuesday, November 8, 2022, and being referred to herein as the November 2022 General Election. The ballot issue to be submitted to the eligible electors shall be substantially as set forth on the attached Exhibit A, which is incorporated by reference into this Resolution as if fully set forth herein. The cost of putting the ballot measure adopted by this Resolution to the eligible voters of the County shall be paid from the general fund of Archuleta County.

17. Publication of Resolution. The Archuleta County Clerk and Recorder is hereby authorized and directed to publish the text of this proposal for a sales tax increase four separate times, a week apart, in *The Pagosa Sun*, a newspaper circulated in the County.

18. Conduct of Election. The election shall be held and conducted, and the results thereof shall be determined so far as practicable, in conformity with the provisions of the Colorado Uniform Election Code of 1992 as set forth in Articles 1 through 13, inclusive, of Title 1, C.R.S.

19. Ballot Title. For purposes of C.R.S. § 1-11-203.5, the ballot title for the ballot issue contained in Exhibit A attached to this Resolution is hereby determined to be the text of the ballot issue itself as set forth in Exhibit A.

- 20. Authority to Effect Resolution. The officers, employees and agents of the County are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution in accordance with Colorado law.
- 21. Effective Date – Applicability. Upon approval at the November 2022 General Election, this proposal shall become effective and in force on January 1, 2023, subject to the terms and conditions as set forth in this Resolution, and shall remain effective unless otherwise repealed according to Colorado law; provided, however, that the provisions of this Resolution calling for an election on the ballot measure set forth in Exhibit A, which is incorporated herein by this reference, shall take effect immediately upon the passage of this Resolution by the Board.

MISCELLANEOUS

- 22. Statutory References. Unless otherwise referenced, all statutory citations in this Resolution shall be construed to refer to the Colorado Revised Statutes, referred to as C.R.S., and as the same may be from time to time amended.
- 23. Amendments. Unless otherwise required by Colorado law, the provisions of this Resolution may be amended by resolution of the Board of County Commissioners.
- 24. Severability. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution. It is the intention of the Board that the various parts of this Resolution are severable.

APPROVED AND ADOPTED this 6th day of September 2022.

BOARD OF COUNTY COMMISSIONERS
ARCHULETA COUNTY, COLORADO



Alvin Schauf
Alvin Schauf, Chairman

ATTEST

Kristy Archuleta
by Mary Helminski
Kristy Archuleta, County Clerk and Recorder

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Kristy Archuleta
Archuleta County

EXHIBIT A

BALLOT ISSUE & TITLE

SHALL ARCHULETA COUNTY TAXES BE INCREASED \$6,525,000.00 ANNUALLY (FIRST FULL FISCAL YEAR DOLLAR INCREASE) BEGINNING JANUARY 1, 2023, AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY INCREASING THE COUNTY SALES TAX RATE BY ONE AND A HALF PERCENT (1.5%), (WHICH REPRESENTS A 1 AND ½ CENT INCREASE ON EACH ONE DOLLAR PURCHASE), WITH PROCEEDS FROM SUCH SALES TAX INCREASE BEING DIVIDED FIFTY PERCENT (50%) TO ARCHULETA COUNTY AND FIFTY PERCENT (50%) TO THE TOWN OF PAGOSA SPRINGS; AND TO BE USED BY ARCHULETA COUNTY TO IMPROVE THE SAFETY OF ROADS, BRIDGES AND INFRASTRUCTURE IN ARCHULETA COUNTY, TO CONSTRUCT AND MAINTAIN NEEDED ARCHULETA COUNTY CAPITAL PROJECTS AND IMPROVEMENTS, AND TO COVER THE GROWING COSTS OF PROVIDING EXISTING AND NEW SERVICES TO THE CITIZENS OF ARCHULETA COUNTY; AND TO BE USED BY THE TOWN OF PAGOSA SPRINGS TO IMPROVE THE SAFETY OF ROADS, BRIDGES AND INFRASTRUCTURE WITHIN THE TOWN OF PAGOSA SPRINGS, TO CONSTRUCT AND MAINTAIN NEEDED TOWN OF PAGOSA SPRINGS CAPITAL PROJECTS AND IMPROVEMENTS, AND TO COVER THE GROWING COSTS OF PROVIDING EXISTING AND NEW SERVICES TO THE CITIZENS OF PAGOSA SPRINGS; AND SHALL THE REVENUES FROM SUCH TAX INCREASE AND ANY INVESTMENT INCOME EARNED FROM SUCH REVENUE BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE UNDER SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION; ALL IN ACCORDANCE WITH THE ARCHULETA COUNTY BOARD OF COUNTY COMMISSIONERS' RESOLUTION 2022-~~98~~?

YES

NO