

ORDINANCE NO. 1282

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO CALLING AN ELECTION ON APRIL 7, 2020, AND CERTIFYING BALLOT ISSUES TO ASK VOTERS WHETHER THE TOWN CAN RETAIN SALES AND USE TAX REVENUE COLLECTED IN 2019 IN EXCESS OF THE AMOUNT SHOWN ON THE 2018 BALLOT ISSUE AND MAINTAIN THE EXISTING SALES AND USE TAX RATE OF 4.0%; SETTING THE BALLOT TITLE AND CONTENT FOR THE BALLOT ISSUE; PROVIDING THE EFFECTIVE DATE OF THIS ORDINANCE AND SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town of Berthoud, Colorado (the “Town”), is a statutory municipality of the State of Colorado, duly organized and operating under the constitution and laws of the State (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, at an election held by the Town on November 6, 2018, the following ballot issue was approved by the qualified electors voting at such election (the “2018 Ballot Issue”):

SHALL THE TOWN OF BERTHOUD TAXES BE INCREASED \$1,400,000 (FIRST FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY FOR THE PURPOSE OF FUNDING PARKS AND RECREATION NEEDS WITHIN THE TOWN; SUCH TAX TO CONSIST OF A RATE INCREASE IN THE TOWN SALES AND USE TAX OF 1.0% (WHICH REPRESENTS A ONE CENT INCREASE ON EACH DOLLAR) COMMENCING JANUARY 1, 2019; SHALL ALL REVENUES GENERATED FROM THE TAX, NET OF THE COSTS OF COLLECTION, BE DEPOSITED INTO A SEPARATE PARK AND RECREATION FUND AND RESTRICTED AS TO USE SOLELY FOR PARKS AND RECREATION PURPOSES, INCLUDING BUT NOT LIMITED TO:

- EXPANDING AND IMPROVING THE EXISTING TOWN TRAIL SYSTEM;
- RENOVATING OR REPLACING EXISTING AQUATIC FACILITIES;
- DEVELOPING, CONSTRUCTING AND EQUIPPING A RECREATION CENTER AND RELATED FACILITIES; AND
- DEVELOPING CONSTRUCTING AND EQUIPPING ATHLETIC FIELDS;

AND, TO THE EXTENT FUNDS ARE AVAILABLE, FOR THE PURPOSE OF CONSTRUCTING, ACQUIRING, EQUIPPING AND OPERATING PARK AND RECREATION IMPROVEMENTS; AND SHALL THE TAX REVENUES DEPOSITED IN THE TOWN PARK AND RECREATION FUND AND ALL EARNINGS THEREON (REGARDLESS OF AMOUNT) CONSTITUTE A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE REVENUE AND SPENDING LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

; and

WHEREAS, Subsection (3)(c) of Article X, Section 20 of the Colorado Constitution (“TABOR”) states, in part, that “Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate [set forth in the ballot question authorizing such tax increase] for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess refunded in the next fiscal year;” and

WHEREAS, based on tax receipts since the sales and use tax approved in the 2018 Ballot Issue (the “Sales and Use Tax”) was imposed, the Town estimates that the actual first full fiscal year dollar amount of tax receipts will be in excess of the first full fiscal year dollar increase set forth in the 2018 Ballot Issue (the “Excess Revenue”); and

WHEREAS, unless the Town obtains later voter approval, Subsection (3)(c) of TABOR, mandates that the Town refund the Excess Revenue and reduce the 4.0% sales and use tax rate in proportion to such excess; and

WHEREAS, the Town desires to retain the Excess Revenue for the purposes set forth in the 2018 Ballot Issue; and

WHEREAS, in order to continue funding the purposes set forth in the 2018 Ballot Issue, the Town desires to continue to levy the Sales and Use Tax at the current rate of 4.0%;

WHEREAS, the Board of Trustees of the Town (the “Board”) has determined that the question regarding whether the Town can retain the Excess Revenue and maintain the existing Sales and Use Tax rate of 4.0% should be submitted by the Board to the eligible electors of the Town; and

WHEREAS, the Board has determined to set the ballot titles and content for the ballot issues to be submitted at the election called by this Ordinance.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. An election shall be held on Tuesday, April 7, 2020 (the “Election Date”), at which there shall be submitted to the eligible electors of the Town the ballot issue which shall be in substantially the forms attached hereto as Appendix A. Appendix A is hereby incorporated into this Ordinance as if set forth in full herein.

Section 2. For purposes of Section 1-11-203.5, C.R.S., this Ordinance shall serve to set the ballot title for the ballot issue set forth in Appendix A hereto. Appendix A is hereby incorporated into this Ordinance as if set forth in full herein. The ballot title for the ballot issue attached hereto as Appendix A shall be the text of such ballot issue.

Section 3. The officers and employees of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance and comply with the Uniform Election Code, Article X, Section 20 of the Colorado Constitution (“TABOR”)

and other applicable laws and election rules. The Town Clerk shall be the Designated Election Official for the Town in connection with the coordinated election.

Section 4. If a majority of the votes cast on the ballot issue submitted at the election shall be in favor of such ballot issue, the Town acting through the Board shall be authorized to proceed with the necessary actions in accordance with the ballot issue which has been so approved. Any authority to issue bonds, if conferred by the results of the election, shall be deemed and considered a continuing authority to issue the bonds so authorized at any one time, or from time to time, and neither the partial exercise of the authority so conferred, nor any lapse of time, shall be considered as exhausting or limiting the full authority so conferred.

Section 5. All actions not inconsistent with the provisions of this Ordinance heretofore taken by the members of the Board and the officers and employees of the Town and directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.

Section 6. All prior acts, orders, ordinances or resolutions, or parts thereof, by the Town in conflict with this Ordinance are hereby repealed, except that this repealer shall not be construed to revive any act, order, ordinance or resolution, or part thereof, heretofore repealed.

Section 7. If any section, paragraph, clause or provision of this Ordinance 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 Ordinance, it being the intention that the various parts hereof are severable.

Section 8. It is hereby found and determined by the Board that there exists an immediate need to certify the ballot issue by an established date in order to ensure that the matters set forth in this Ordinance will be subject to a vote by the eligible electors of the Town. As a result of the foregoing, the Board hereby declares that an emergency exists, and that this ordinance is necessary to the immediate preservation of the public peace, health and safety, all in accordance with §31-16-105, C.R.S. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the Town Clerk, and shall be published in accordance with law.

INTRODUCED, READ, ADOPTED AS AN EMERGENCY ORDINANCE, AND
ORDERED PUBLISHED at a meeting of the Board of Trustees of the Town of Berthoud,
Colorado, this 11th day of February, 2020.

TOWN OF BERTHOUD, COLORADO

ATTEST:

By

Christian R. Samora, Town Clerk

By William Karspeck
William Karspeck, Mayor



APPENDIX A

Ballot Issue – Ordinance 1282:

WITHOUT LEVYING ANY NEW TAX OR INCREASING ANY EXISTING TAX RATE, SHALL THE TOWN OF BERTHOUD, BE AUTHORIZED TO CONTINUE TO LEVY THE EXISTING SALES AND USE TAX AT THE CURRENT RATE OF 4.0% IN 2020 AND THEREAFTER (WHICH CURRENT RATE WAS PREVIOUSLY APPROVED BY TOWN VOTERS AT THE NOVEMBER 6, 2018 ELECTION) AND RETAIN ALL REVENUES FROM SUCH TAX THAT DO NOT EXCEED \$1,800,000 IN CALENDAR YEAR 2019 (WHICH AMOUNT WAS ESTIMATED AT \$1,400,000 IN THE BALLOT ISSUE PREVIOUSLY APPROVED BY VOTERS AT THE NOVEMBER 6, 2018 ELECTION) AND ALL REVENUES FROM SUCH TAX WITHOUT LIMITATION IN EACH SUBSEQUENT YEAR FOR THE PURPOSES SET FORTH IN THE BALLOT ISSUE APPROVING SUCH TAX PREVIOUSLY APPROVED BY VOTERS AT THE NOVEMBER 6, 2018 ELECTION, WHICH PURPOSES WERE RESTRICTED TO USE SOLELY FOR PARKS AND RECREATION PURPOSES, INCLUDING BUT NOT LIMITED TO:

- EXPANDING AND IMPROVING THE EXISTING TOWN TRAIL SYSTEM;
- RENOVATING OR REPLACING EXISTING AQUATIC FACILITIES;
- DEVELOPING, CONSTRUCTING AND EQUIPPING A RECREATION CENTER AND RELATED FACILITIES; AND
- DEVELOPING, CONSTRUCTING AND EQUIPPING ATHLETIC FIELDS;

AND, TO THE EXTENT FUNDS ARE AVAILABLE, FOR THE PURPOSE OF CONSTRUCTING, ACQUIRING, EQUIPPING AND OPERATING PARK AND RECREATION IMPROVEMENTS; AND SHALL ALL AMOUNTS RECEIVED BY THE TOWN BE EXEMPT FROM THE REVENUE AND SPENDING LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?